164-704

TRANSCRIPT OF RECORD.

164-704

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 457.

HENRY CRAEMER, PLAINTIFF IN ERROR,

vs.

THE STATE OF WASHINGTON.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

FILED FEBRUARY 24, 1896.

(16,204.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 19, 1896.

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1 (Front cover, record of superior court.)

No. 1719. 1.25.

Filed Mar. 22, 1895.

C. S. REINHART, *Clerk*,
By R. B. CRANDALL, *Deputy*.

2 THE STATE OF WASHINGTON, Plaintiff and Respondent,
—
HENRY CRAEMER, Defendant and Appellant. } No. 1054.

Appeal from the superior court of King county to the supreme court of the State of Washington.

3 I, William Caldwell, a justice of the peace in and for Seattle precinct, King county, State of Washington, do hereby certify that the foregoing and annexed transcript contains and is a full, true, and correct transcript of all the entries made in my docket relating to that certain case heretofore pending before me as justice of the peace as aforesaid, in which State of Washington — plaintiff and Henry Craemer defendant, and that the annexed and attached papers are all the process and other papers relating to the said action and filed with me.

Dated at Seattle, Washington, the 27th day of August, 1894.

WILLIAM CALDWELL,
Justice of the Peace for Seattle Precinct,
King County, Washington.

4 *Cost Bill.*

No. of case, 4945.

STATE OF WASHINGTON
vs.
HENRY CRAEMER. } Crime: Murder.

Disposition held sup. court.

Total fees of Justice Wm. Caldwell..... ... . 2 35
Total fees of Constable Terry King..... .... 4 40

Witness' Fees.

Name of witness.	Per diem.	Mileage.		
G. M. Horton.....	2 00	.20	State.	2 20
Ed. Cudihee.			Police.	
Bolton Rogers.				

I hereby certify on honor that the above case was tried in my court on the day and date above named, and that the fees therein

are justly due, and that payment of the same or any part thereof has not been made, and said amounts are justly due from King county.

WILLIAM CALDWELL,
Justice of the Peace, Seattle Precinct.

5 In the Justice's Court, Seattle Precinct, of King County, State of Washington, Before Wm. Caldwell, J. P.

STAEE OF WASHINGTON, Plaintiff,
vs.
HENRY CRAEMER, Defendant.

To said plaintiff and John F. Miller, Esq., its attorney:

I hereby withdraw my appearance as attorney for defendant in the above-entitled cause and consent to the substitution of N. Soderberg in my place and stead as attorney for said defendant.

Dated August 21, 1891.

FRED H. PETERSON.

I hereby enter my appearance in the above cause as attorney for defendant therein.

N. SODERBERG.

Office, 703 Second St., room 16, Seattle, Wash.

6 STATE OF WASHINGTON, *County of King,* } ss:

In Justice's Court, Before William Caldwell, Justice of the Peace in and for King County, Residing and Sitting in Seattle Precinct.

Bolton Rogers, being first duly sworn, on oath says—

That at Seattle, in said King county, State of Washington, on the 13th day of August, A. D. 1894, one Henry Craemer did commit the crime of murder in the first degree as follows:

Then and there being, the said Henry Craemer, in King county, State of Washington, on the 13th day of August, 1894, purposely and of his deliberate and premeditated malice, killed one Philomenia Miller, then and there being, by then and there purposely and of his deliberated and premeditated malice striking and beating and thereby mortally wounding the said Philomenia Miller with a hammer which he, the said Henry Craemer, then and there had and held in his hand, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Washington.

BOLTON ROGERS.

Subscribed and sworn to before me this 16th day of August, A. D. 1894.

WILLIAM CALDWELL,
Justice of the Peace, King County, Washington.

Filed August 16th, A. D. 1894.

WILLIAM CALDWELL,
Justice of the Peace, Seattle Precinct, King County, Wash.

7 STATE OF WASHINGTON, } ss:
County of King, }

In Justice Court, Before William Caldwell, Justice of the Peace, Seattle Precinct.

AUGUST 16TH, 1894.

STATE OF WASHINGTON, Plaintiff,
vs.
HENRY CRAEMER, Defendant. } Murder in the First Degree.

Comes now Bolton Rogers, who files verified complaint charging the above-named defendant, Henry Craemer, with the crime of murder in the first degree in King county, State of Washington, on the 13th day of August, 1894. Warrant issued August 16th, 1894, and placed in hands of Terry King, constable of this court, for execution, and defendant, Henry Craemer, arrested by Terry King on the 16th day of August, 1894, and brought before the court to fix date for *of* preliminary examination and same set for August 17th, 1894, at 3.30 p. m., and defendant, *August* Craemer, committed to the county jail.

Now, on August 17th, 1894, at 3.30 p. m., cause called for preliminary examination. Henry Craemer, the defendant herein, appears in open court and waives preliminary examination.

Wherefore, the court being fully advised in the premises, it is hereby ordered and adjudged that there is probable cause to believe that the defendant, Henry Craemer, is guilty as charged, and that he be held therefore to the superior court in and for King county, State of Washington, without bonds, for trial. It is further ordered

8 that a transcript of this docket entry and all the papers in the said case be filed with the clerk of the said superior court of King county, State of Washington, within 10 days from date hereof.

August 17th, 1894.

WILLIAM CALDWELL,
Justice of the Peace.

(Endorsed:) 1054. Filed Aug. 28, 1894. T. W. Gordon, clerk.

9 In the Superior Court of the State of Washington for King County.

THE STATE OF WASHINGTON, Plaintiff,
vs.
HENRY CRAEMER, Defendant. } No. 1054. Information.

I, John F. Miller, prosecuting attorney in and for King county, State of Washington, come now here, in the name of and by the

authority of the State of Washington, and give this court to understand and be informed and on oath accuse Henry Craemer by this information of the crime of murder in the first degree, committed as follows:

He, the said Henry Craemer, in King county, State of Washington, on the 13th day of August, 1894, purposely and of his deliberate and premeditated malice did kill one Philipine Meller, then and there being, by then and there purposely and of his deliberate and premeditated malice striking, beating, and thereby mortally wounding the said Philipine Meller with a hammer which he, the said Henry Craemer, then and there had and held in his hand—

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Washington.

Dated at Seattle, in county and State aforesaid, this 23rd day of August, 1894.

JOHN F. MILLER,
Prosecuting Attorney,
By A. G. McBRIDE, *Deputy.*

10 STATE OF WASHINGTON, } ss:
County of King, }

A. G. McBride, being first duly sworn, upon his oath deposes and states that he has read the foregoing information, knows the contents thereof, and that the statements and allegations made and contained therein are true as alleged.

A. G. McBRIDE.

Subscribed and sworn to before me this 25th day of August, 1894.

[SEAL.]

T. W. GORDON,
Clerk of Superior Court,
By E. L. WHITTEMORE,
Deputy Clerk.

Witnesses for the State.

George M. Horton, John Booth, Mrs. S. A. Rear, John Meller, A. G. Smith, J. A. Witcher, Bolton Rogers, Frank Duclo, Mrs. H. Denny, Edward Cudihee, Mrs. A. G. Smith, Mrs. L. Cushman, James L. Wells, Charles Phillips, Harry Guyer, James H. Woolery, Chris. Schnigel, J. Jordesen, J. F. McDonald, L. Kienel, —— McCormick, J. L. Barck, August Rother, Thomas May, Jennie Clark.

(Endorsed:) Filed Aug. 25, 1894. T. W. Gordon, clerk.

11 In Superior Court, King County, State of Washington.

STATE OF WASHINGTON } Demurrer.
vs.
HENRY CRAEMER. }

Comes now defendant herein and demurs to the information filed herein against defendant on August 25th, 1894, upon the ground:

1st. That the court has no jurisdiction of said defendant.

2nd. That the court has no jurisdiction of the subject-matter of said information.

3rd. That said information does not state facts sufficient to constitute a public offense.

N. SODERBERG,
Attorney for Defendant.

Dated August 28, 1894.

Received copy of foregoing demurrer Aug. 28th, 1894.
JOHN F. MILLER,
Att'y for Plaintiff.

(Endorsed:) Filed 28 August, 1894. T. W. Gordon, clerk, by P. D. Hughes, deputy clerk.

12 In Superior Court, King County, State of Washington.

STATE OF WASHINGTON
vs.
HENRY CRAMER.
} Motion to Set Aside the Information Filed Herein Aug. 25, 1894.

Comes now defendant herein, by his attorney, N. Soderberg, and moves the court to set aside the information filed herein against defendant on the following grounds:

1st. No preliminary examination of defendant has been had before any committing magistrate, and said information was prematurely filed.

2nd. The filing of said information against defendant is unauthorized by law.

N. SODERBERG,
Att'y for Def't.

Received copy of foregoing motion Aug. 28th, 1894.
JOHN F. MILLER,
Att'y for Plaintiff.

(Endorsed:) Filed 28 Aug., 1894. T. W. Gordon, clerk, by P. D. Hughes, deputy clerk.

13 In the Superior Court of King County, State of Washington.

STATE OF WASHINGTON, Plaintiff,
vs.
HENRY CRAMER, Defendant.

STATE OF WASHINGTON,
County of King,
} *ss:*

Henry Cramer, being first duly sworn, says:

I am the defendant herein. I cannot go to trial at this time owing to the absence of one Jack Quincy, who is a necessary and material witness for my defence. I can procure his presence as a witness in said cause if a continuance of 60 days is granted me. I have used

all diligence in my power to secure his attendance upon the court at this time. Affiant further says that said Jack Quincy is a reputable citizen and a credible witness; that said Quincy, when present as a witness herein, will swear—

That I met him about 2 o'clock in the afternoon of the 13th of August, 1894, on the wharf at Tacoma, Washington; that he then and there paid me $35, as follows, to wit, 2 ten-dollar gold pieces, one five-dollar gold piece, one five-dollar bill, and five dollars in silver; that said payment was made upon a debt of $47, which he had owed me since June, 1891; that at said last-mentioned time I kept a saloon called the Schooner on Alameda street, opposite the Southern freight depot, in Los Angeles, California; that said Quincy was one of my customers and spent a great deal of money in my saloon, and having gotten out of funds, after a prolonged spree, I advanced him the sum of about $28 of said money, the bal-
14 ance of said $47 being for liquors sold by me to him.

Affiant further said that said Quincy informed affiant that he, Quincy, had taken up certain mining claims in the Cascade mountains, somewhere in the vicinity of Monte Cristo, Snohomish county, and would return to said claims about the following day. I do not know the locality in question and did not ascertain the exact place where said claims are located.

Affiant further saith that said Quincy is in the habit of visiting Tacoma about once every two months, as he informed affiant, and that he will return there in about two months from said 13th day of August, 1894. Affiant further says he cannot prove said facts above stated or any of them by any other witness.

HENRY CRAEMER.

Subscribed and sworn to before me this 7th day of September, 1894.

T. W. GORDON, *Clerk*,
By P. D. HUGHES,
Deputy Clerk.

(Endorsed:) Filed 7 Sept., 1894. T. W. Gordon, clerk, by P. D. Hughes, deputy clerk.

15 In the Superior Court of King County, State of Washington.

STATE OF WASHINGTON
vs.
HENRY CRAMER.

STATE OF WASHINGTON, }
County of King, } ss:

Henry Cramer, being first duly sworn, on his oath says—

That he is the defendant in the above-entitled cause; that said cause is a criminal one, the defendant being charged with the commission of the crime of murder in the first degree by the information herein.

That defendant is wholly without means and impecunious; that one Jack Quincy is a competent, necessary, and material witness for defendant in said cause, and that defendant cannot safely proceed to trial without the testimony of said witness.

That said witness, as affiant is informed and believes, is now at or in the vicinity of Monte Cristo, in Snohomish county, Washington; that said witness is a credible one, and by him and by his testimony defendant can and will prove an alibi, and that defendant on the afternoon of the day upon which the homicide in question was committed met said Quincy in Tacoma, Washington, and received from him the money taken from defendant and his family at the time of his arrest and claimed by the prosecution to be part of the money in the possession of the deceased Phillipine Miller at the time of her death; that said cause has been set for trial on the 7th day of September, 1894, but further affiant saith not.

HENRY CRAEMER.

Subscribed and sworn to before me this 4th day of September, 1894.

16 T. W. GORDON,
County Clerk and ex Officio Clerk of the Superior Court,
By N. S. PETERSON,
Deputy Clerk.

Upon reading and filing the foregoing affidavit it is ordered that the clerk of said court forthwith issue a subpœna herein for said Jack Quincy at the expense of said King county, and that said subpœna be served by the sheriff at the expense of said King county.

R. OSBORN, *Judge.*

Dated Sept. 4, 1894.

(Endorsed:) Filed Sep. 4, 1894. T. W. Gordon, clerk.

17 In the Superior Court of the State of Washington for King County.

THE STATE OF WASHINGTON, Plaintiff,
vs.
HENRY CRAEMER, Defendant. } No. 1054.

To the above-named defendant and N. Soderberg, his attorney:

You and each of you will please take notice that application will be made to Honorable T. J. Humes, presiding judge of the criminal department, on Wednesday, September 5th, 1894, at the hour of 9.30 o'clock a. m., or as soon thereafter as counsel can be heard, for permission to endorse upon the information of the following-named witnesses as additional witnesses for and on behalf of the State:

J. Jordison, Harry Guyer, —— McCormack, whose Christian name is unknown; Mrs. L. Cushman, Mrs. H. Denny.

JOHN F. MILLER,
Attorney for Plaintiff.

A copy of the above motion received and service accepted this 4th day of September, 1894.

N. SODERBERG,
Attorney for Defendant.

(Endorsed:) Filed this 5th day of Sept., 1894. T. W. Gordon, clerk, by P. D. Hughes, deputy clerk.

18 In the Superior Court of King County, State of Washington.

STATE OF WASHINGTON
vs.
HENRY CRAMER.

STATE OF WASHINGTON, } ss:
County of King, }

Mary Cramer, being first duly sworn, on her oath says:

I am now and during all the times herein stated was — have been the wife of said defendant. In the summer of 1891 we resided in the city of Los Angeles, California, where my said husband kept a liquor saloon. I know Jack Quincy. He was at my house sick for 2 days in June or July, 1891. I took care of and nursed him. He was a man about 40 years old; had dark complexion, dark eyes, black hair, wore a black mustache; his height was about 5 foot 7 inches; he was either an Englishman or American by birth; by occupation he was a mechanical engineer. I understood at the time he was at our house he was indebted to my husband. Since the 1st of January last my husband has visited Tacoma, Washington, 3 times for the purpose, as he stated to me, of collecting said demand. The last time he went to Tacoma for said purpose, as stated by him to me before leaving home, was in the forenoon of the 13th of August, 1894. He returned home some time after 10 o'clock p. m. of that day and told me he had collected of said Jack Quincy, at Tacoma, in the afternoon of that day, $35, most of which money he gave to me on his return, and which is the identical money taken by the police officer from me after defendant's arrest; and further affiant saith not.

MARY CRAEMER.

19 Subscribed and sworn to before me this 7th day of September, 1894.

T. W. GORDON, *Clerk,*
By P. D. HUGHES,
Deputy Clerk.

(Endorsed:) Filed 7 Sept., 1894. T. W. Gordon, clerk, by P. D. Hughes, deputy clerk.

20 In the Superior Court, King County, State of Washington.

STATE OF WASHINGTON, Plaintiff,
vs.
HENRY CRAEMER, Defendant.

STATE OF WASHINGTON, *County of King,* } *ss.*:

N. Soderberg, being first duly sworn, on his oath says that he is the defendant's attorney herein.

That on the 27th of August, 1894, said defendant pleaded not guilty to the information herein, and said cause was thereupon set for trial by said court on the 7th day of September, 1894; that immediately thereupon affiant commenced diligently to inquire into the facts constituting the defense to said charge as claimed by the defendant; that on the 31st day of August, 1894, at the request of said defendant, affiant wrote two letters to Jack Quincy, one addressed to Monte Cristo, Snohomish county, Washington, and the other to Tacoma, Washington, both of said letters being duly inclosed in envelopes and postage thereon prepaid and by affiant deposited in the United States post-office at Seattle, Washington, in each of which said letters affiant informed said Jack Quincy of the arrest of said defendant herein upon the said charge of murder, and that said defendant asserts that he met said Jack Quincy at Tacoma, Washington, on the afternoon of the day of the commission of the alleged homicide and then and there received of said Jack Quincy the sum of thirty-five dollars (35.00) as follows, two ten-dollar gold pieces, one five-dollar gold piece, one five-dollar currency bill, and five dollars in silver, and that the testi-
21 mony of said Jack Quincy was indispensable to the defendant's defense, and requesting said Jack Quincy to immediately answer said letters; that said letters contained affiant's address upon the left-hand corner of the envelope; that said letters have not been returned to affiant and no answer has been received to either of them by affiant.

Affiant further says that Tacoma, Wash., is distant from Seattle about thirty miles, and that Monte Cristo, Wash., is distant from Seattle about eighty miles; that both of said places are connected with Seattle by railroad, and that, as affiant is informed and believes, the United States mails are received daily at Seattle from both of said places; that the transmission from Seattle to Tacoma requires less than two hours, and from Seattle to Monte Cristo, as affiant is informed and believes, less than one day.

Affiant further says that on the fourth day of September affiant secured from the clerk of this court, pursuant to an order made by one of the judges of said court, a subpœna for said Jack Quincy, and on the same day sent the same in due course of mail to the sheriff of Snohomish county, Washington, for service, and with it a letter from affiant, a copy of which is hereunto attached, marked "Exhibit A," and made a part hereof; that said subpœna has not been returned by said sheriff, but affiant has just received from said sheriff

the letter hereto attached, marked "Exhibit B," and made a part hereof; that affiant did not cause a subpœna for said Jack Quincy to be sent to Tacoma because, from the best information affiant was able to obtain, said Jack Quincy has not been in Tacoma since the 14th day of August, 1894.

That affiant had intended to send a private messenger to
22 Monte Cristo and vicinity to find the said Jack Quincy, but was unable to do so, owing to the defendant being impecunious and unable to furnish money for said purpose.

That affiant has endeavored in good faith and to the best of his ability to get ready for trial in the said cause at this time and to secure the attendance of said Quincy as a witness at this time, but has been unable to do so.

That said Quincy is unknown to this affiant; that said subpœna required said Quincy to appear as a witness in this court in said cause on September 7th, 1894, at 9.30 a. m. of said day.

N. SODERBERG.

Subscribed and sworn to before me this 7th day of September, 1894.

T. W. GORDON, *Clerk*,
By P. D. HUGHES,
Deputy Clerk.

STATE
vs.
HENRY CRAMER.

SEATTLE, WASH., *Sept.* 4, 1894.

Sheriff Snohomish Co., Snohomish city.

DEAR SIR: I enclose herewith subpœna for Jack Quincy, a witness for def't in State *v.* Cramer (murder case), which the court has ordered served at expense of King county. I understand Mr. Quincy is a stationary engineer and mining man, residing at or near Monte Cristo, in your county. Kindly attend to the service at once, as the time is short. An immediate answer will oblige—

Yours res'y, N. SODERBERG,
Att'y for Def't.

23 Office of James Hagan, sheriff, Snohomish county, Washington.

SNOHOMISH, WASH., *Sep. 6th*, 1894.

N. Soderberg, att'y-at-law, Seattle.

DEAR SIR: You- letter inclosing subpœna in case State *vs.* Craemer rec'd last night. The train only goes to Monte Cristo on alternate days. I will go up tomorrow (Sep. 7th).

Hoping I can serve subpœna in time, I remain,

Yours, truly, JAMES HAGAN,
Per K.

(Endorsed:) Filed 7 Sep'r, 1894. T. W. Gordon, clerk, by P. D. Hughes, deputy clerk.

24 In the Superior Court of the State of Washington for the County of King.

STATE OF WASHINGTON, Plaintiff,
vs.
HENRY CRAEMER, Defendant. } No. 1054.

To Mrs. Joe Moseback:

In the name of the State of Washington you are hereby commanded to be and appear at the superior court of King county, in the court-room of Judge T. J. Humes, in the court-house, at Seattle, at 9.30 o'clock in the forenoon of the 11th day of September, A. D. 1894, then and there to give evidence in a certain cause therein pending, wherein State of Washington — plaintiff and Henry Craemer is defendant, and to remain in attendance on said court until discharged, and herein fail not at your peril.

Witness on behalf of def't.

Witness the Honorable T. J. Humes, judge of said superior court, and the seal thereof, this 10th day of September, A. D. 1894.

[SEAL.] T. W. GORDON, *Clerk*,
By P. D. HUGHES,
Deputy Clerk.

STATE OF WASHINGTON, } *ss:*
County of King, }

I hereby certify that I received the within subpœna on the 10th day of September, A. D. 1894, and personally served the same on Mrs. Joe Moseback by reading the same to *each of* her in King county, Washington, on the 11th day of September, A. D. 1894.

Dated King county, Washington, on the 11th day of September, 1894.

WALTER H. SODERBERG.

Subscribed and sworn to before me Sept. 11, 1894.
JAMES PARK HENDERSON,
Notary Public, Seattle, King Co., Wash.

(Endorsed:) Filed Sep. 11, 1894. T. W. Gordon, clerk.

25 In the Superior Court of the State of Washington for the County of King.

STATE OF WASHINGTON, Plaintiff,
vs.
HENRY CRAEMER, Defendant. } No. 1054. Subpœna.

To Jack Quincy:

In the name of the State of Washington you are hereby commanded to be and appear at the superior court of King county, in the court-room of Judge T. J. Humes, in the court-house, at Seattle, at 9.30 o'clock in the forenoon of the 7th day of September, A. D. 1894, then and there to give evidence in a certain cause therein

pending, wherein State of Washington — plaintiff and Henry Craemer defendant, and to remain in attendance on said court until discharged, and herein fail not at your peril.

Witness on behalf defendant.

Witness the Honorable T. J. Humes, judge of said superior court, and the seal thereof this 4 day of Sept., A. D. 1894.

[SEAL.] T. W. GORDON, *Clerk*,
By J. B. GORDON,
Deputy Clerk.

26 STATE OF WASHINGTON, } ss:
County of King, }

I hereby certify that I received the within subpœna on the 5th day of Sept., A. D. 1894, and after due and diligent search and inquiry have been unable to find the within-named witness, Jack Quincy, in Snohomish county, Washington.

Dated Snohomish county, Washington, on the 8th day of Sept., A. D. 1894.

JAS. HAGAN,
Sheriff Sno. Co.,
By E. J. DWYER, *Dep.*

Fees.

Mileage—miles, 120..... $12 00

$12 00

(Endorsed:) Filed Sep. 15, 1894. T. W. Gordon, clerk.

27 *Defendant's Instructions.*

No. A.

The jury are instructed that the evidence in this case is insufficient to justify you in finding the defendant guilty, and you are therefore adviced by the court to acquit the defendant.

(Endorsed:) 1054. Filed 10 Sept., 1894. T. W. Gordon, clerk, by P. D. Hughes, deputy clerk.

28 STATE }
v.
CRAMER. }

Defendant's Instructions.

B.

Given. You are instructed that it is not your duty or province to ascertain or decide who may be the guilty party in taking the life of Phillipine Miller. All you have to decide is whether defendant is guilty or innocent of that charge. So that if you cannot find from the testimony in the case and beyond all reasonable doubt that defendant is guilty, you should not hesitate to acquit the defendant.

N. SODERBERG,
W. E. HUMPHREY,
Att'ys for Def't.

In the Superior Court of King County, State of Washington.

STATE OF WASHINGTON
vs.
HENRY CRAEMER.

Not given except as given — gen. inst.

The defendant asks the court that all instructions be given in writing, and that each of the following instructions be given to the jury:

1st. If any one of the jurors have a reasonable doubt of the defendant's guilt*y*, then he cannot be convicted, and if all of the jurors have a reasonable doubt of defendant's guilt, then he must be acquitted.

2nd. If any one of you gentlemen entertain a reasonable doubt as to the guilt of the defendant, then it is your duty to give the benefit of that doubt to the defendant and not agree to his conviction.

29 3rd. The defendant is presumed to be innocent, and that presumption follows him all through the trial of this cause. He is not required to prove anything, but the burden of proof is on the State clear through the trial, and if from the testimony any one juror has a reasonable doubt of the guilt of the defendant he cannot be convicted, and if you all have a reasonable doubt of his *doubt* he must be acquitted.

4th. It is not sufficient to convict the defendant that one fact or all of the facts point to his guilt, but if you can explain them upon any reasonable hypothesis consistent with the innocence of the defendant, then you must acquit him.

5th. Evidence is sufficient to remove a reasonable doubt when it convinces an ordinarily prudent man of the truth of a proposition with such force that he would act upon that conviction without hesitation in his most important affairs. It would be unsafe to convict any person of a felony when the facts proved and the supposition of guilt simply afford a solution of what would otherwise be a mystery, and when the facts proved are susceptible of explanation upon any reasonable hypothesis consistent with the innocence of the accused. This principle should guide you in determining whether the defendant — guilty, and if there is a reasonable doubt whether the defendant's guilt has been satisfactorily shown he must be acquitted.

6th. The fact, if it is a fact, that the defendant made false statements as to his whereabouts on the night of the happening of the murder will not be sufficient of themselves to convict the defendant of the crime charged. He may have given a false account of himself and not have committed the crime charged.

30 7th. The fact, if it is a fact, as claimed by the State, that a hammer belonging to the defendant was found in the house of deceased with blood upon it does not of itself prove that the defendant put the hammer there or that he committed the crime charged.

Refused except as given in gen'l inst.

8th. The fact, if it is a fact, that money was found on the premises of defendant after the crime was committed which correspond- in sums and amounts to the money had by the deceased does not of itself connect the defendant with the crime charged, and if you can account for the money being put there upon any reasonable theory of the innocence of the defendant it is your duty to do so and give him the benefit of all reasonable doubts and not consider the fact against him.

9th. If you can reconcile the fact of defendant giving money to his wife after the crime charged, upon the theory of innocence, then you must do so and not consider that fact against him.

10th. If there is any fact in the chain of evidence which can be explained upon any reasonable theory of defendant's innocence, then the fact must be dropped out of the chain of evidence and not considered against him. If you have a reasonable doubt as to the truth of any link in the chain of evidence, then that link must be left out of the chain, and if with the doubtful links left out the chain is not complete, then the defendant must be acquitted.

11th. It is proper for the court to remind you that the issue to the defendant is of so grave a nature and to the public safety of such vital importance that upon your part there should be no error. The accused, if innocent, should be acquitted. Remember that the defendant's life and liberty are his highest and most sacred rights, and can only be forfeited by him for the causes and in the
31 manner presented by law. There must be no guesswork about the guilt of the defendant. He must be proven guilty beyond all reasonable doubt, and if not so proven guilty he must be acquitted.

12th. You must obey the law as given you by the court. You have no right to disregard the law, and if the State has failed to prove the guilt of the defendant beyond any reasonable doubt he must be acquitted.

13th. To justify a conviction upon circumstantial evidence alone the facts relied upon must be absolutely incompatible with the innocence of accused and incapable of explanation upon any other hypothesis.

14th. The burden of proof in criminal cases is on the State, and this burden never changes, and it is not incumbent upon the defendant to explain anything. He does not have to account for any circumstances or conditions surrounding him. All mysteries and doubts must be solved in his favor upon the theory of his innocence.

Even if you should think him guilty, you cannot convict him unless you get that belief wholly from the testimony which so satisfies you of his guilt beyond a reasonable doubt. His guilt must be proven by the State, and if the State has failed to make the proof, acquit him.

Refused.

15th. If the State has failed to prove beyond a reasonable doubt that the supposed blood-stains upon the hammer handle were human blood, then you have no right to conclude that it was human blood, and you must give the defendant the benefit of the doubt and not consider that fact against him.

Not given.

32 16. If all the facts and circumstances introduced in evidence could be explained upon some other reasonable hypothesis than the guilt of the defendant, and there was an equal probability that some other person than the defendant had committed the crime, then your verdict must be for the defendant.

(State *v.* Pogano, 35 Pac. Rep., 388.)

N. SODERBERG,
W. E. HUMPHREY,
Attorneys for Defendant.

STATE
v.
CRAMER.

Defendant's Instructions.

E.

Given in gen. inst's.

The jury are instructed that if you find that any witness in the case has wilfully given false testimony concerning any material fact or facts in the case, you will then be entitled to disregard the whole of the evidence of such witness, except as it may be corroborated or confirmed by other evidence in the case.

N. SODERBERG,
W. E. HUMPHREY,
Att'ys for Defendant.

(Endorsed:) 1054. Filed Sept. 8, 1894. T. W. Gordon, clerk, by P. D. Hughes, deputy clerk.

33 No. 1054.

STATE OF WASHINGTON,
King County.

Superior Court.

We, the jury in the case wherein The State of Washington is plaintiff and Henry Craemer is defendant, do find the defendant guilty as charged.

WINSLOW H. LORD, *Foreman.*

(Endorsed:) Filed Sept'r 12th, 1894. T. W. Gordon, clerk, by D. G. McKay, deputy clerk.

34 In the Superior Court of King County, Washington, Criminal Department.

STATE OF WASHINGTON, Plaintiff,
v.
HENRY CRAEMER, Defendant. } No. —. Notice.

Notice is hereby given that the defendant intends to move the court for a new trial in the above-entitled cause for the following reasons:

1. Error of law occurring at the trial and excepted to at the time by the defendant.
2. That the verdict is contrary to the evidence.
3. That the verdict is contrary to law.
4. Error of the court in refusing to give to the jury each of the instructions requested by the defendant, numbered from 1 to 16, inclusive.
5. Because of newly discovered evidence, material for the defense, which the defendant could not have discovered with reasonable diligence and produced at the trial.

N. SODERBERG AND
W. E. HUMPHREY,
Attorneys for Defendant.

Endorsed: Filed Sep. 13, 1894. T. W. Gordon, clerk.

35 In the Superior Court of King County, Washington, Criminal Department.

STATE OF WASHINGTON, Plaintiff,
vs.
HENRY CRAEMER, Defendant. } No. —. Motion for New Trial.

The defendant moves the court for a new trial in this cause for the following reasons, to wit:

1. Error of law occurring at the trial and excepted to at the time by the defendant.
2. That the verdict is contrary to the evidence.
3. That the verdict is contrary to law.
4. Error of the court in refusing to give to the jury each of the instructions requested by the defendant, numbered from 1 to 18, inclusive.
5. Because of newly discovered evidence, material for the defense, which the defendant could not have discovered with reasonable diligence and produced at the trial.

Wherefore defendant asks for a new trial in said cause.

N. SODERBERG,
W. E. HUMPHREY,
Attorneys for Defendant.

(Endorsed:) Filed Sep. 13, 1894. T. W. Gordon, clerk.

36 In the Superior Court of the State of Washington for the County of King.

THE STATE OF WASHINGTON, Plaintiff,
vs.
HENRY CRAEMER, Defendant.
} 1054. Motion Denied, Sentence, etc.

SATURDAY, *October 13th*, 1894.

Comes now the said defendant in person and accompanied by his counsel, N. Soderberg, Esq., and the prosecuting attorney into court. By consent of court and at request of defendant, N. Soderberg, Esq., withdraws as counsel for defendant, and J. L. Green, Esq., is substituted as counsel. Thereupon defendant's motion for an order to set aside verdict and for a new trial comes on to be heard, and on consideration thereof said motion is denied by the court; to which defendant, by his counsel, excepts and an exception is allowed. The prosecuting attorney thereupon moves for judgment, and the defendant is brought before the bar of the court for sentence, and, no good cause appearing or being shown to the court why judgment should not be pronounced upon the defendant, the court rendered its judgment that whereas the said Henry Craemer has been found guilty of the crime of murder in the first degree, it is therefore ordered, considered, and adjudged that the said Henry Craemer is guilty of the crime of murder in the first degree, and that he be punished by hanging by the neck until he shall be dead.

Defendant gives notice of appeal in open court to the supreme court of the State of Washington.

T. J. HUMES, *Judge.*

37 In the Superior Court of King County, State of Washington.

STATE OF WASHINGTON, Plaintiff,
vs.
HENRY CRAEMER, Defendant.
} No. 1054. Order for Further Time to File Statement of Facts.

Upon motion of counsel, J. L. Green and Daniel Cross, asking for further time to file statement of facts in the case of The State of Washington *vs.* Henry Craemer, the court being satisfied that further time should be given—

It is therefore ordered that the time be extended, and is hereby extended, until the 20th day of December, 1894.

T. J. HUMES, *Judge.*

(Endorsed:) Filed Dec. 15, 1894. T. W. Gordon, clerk.

38 In the Superior Court of King County, State of Washington.

STATE OF WASHINGTON
vs.
HENRY CRAEMER, Defendant.
} No. 1054. Stipulation.

It is hereby stipulated and agreed between the parties to the above-entitled cause and their respective attorneys that the time for serv-

ing the brief of defendant in said cause shall be, and is hereby, extended to and including the 21st day of January, 1895.

JOHN F. MILLER,
Prosecuting Attorney for King County, Washington.
CROSS, GREEN, RELFE & McC.,
Attorneys for Defendant, Henry Craemer.

This extension is for 7 days only.

(Endorsed:) Filed Jan. 8, 1895. T. W. Gordon, clerk.

39 STATE OF WASHINGTON, } ss:
County of King, }

I, T. W. Gordon, county clerk of King county and *ex officio* clerk of the superior court of the State of Washington for the county of King, do hereby certify that the foregoing is a full, true, and correct transcript of so much of the record in said cause No. 1054 as I am required to transmit to the supreme court on appeal, together with the original statement of facts.

In witness whereof I have hereunto set my hand and affixed the seal of said court this 20th day of March, A. D. 1895.

[SEAL.] T. W. GORDON, *Clerk,*
By J. B. GORDON, *Deputy.*

40 No. 1719. In the superior court of King county, State of Washington. State of Washington, plt., *vs.* Henry Creamer, def't. No. 1054. Statement of facts. Filed Mar. 22, 1895. C. S. Reinhart, clerk, by R. B. Crandall, deputy. Filed Dec. 20, 1894. T. W. Gordon, clerk. Daniel T. Cross, rooms 404, '5, & '6 Bailey bldg.; Relfe and McCutchin, Occidental building, Seattle, Wash., att'ys for defendant.

Due service of a copy of the within statement of facts is hereby acknowledged this 20th day of December, 1894.

JOHN F. MILLER,
Prosecuting Att'y in and for King County,
State of Washington, Att'y for Plaintiff.

41 *Index to Supplemental Record on Appeal from Superior Court.*

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42 In the Superior Court of the State of Washington for King County.

THE STATE OF WASHINGTON, Plaintiff, *vs.* HENRY CREAMER, Defendant. } No. 1054. Affidavit of J. F. Miller.

STATE OF WASHINGTON, *County of King,* } *ss:*

John F. Miller, being first duly sworn, upon oath deposes and says that he is prosecuting attorney of King county, State of Washington, and that as such prosecuting attorney he is charged with the prosecution of the above-named defendant; that heretofore, on the 17th day of August, 1894, and before the filing of the information in this case, a preliminary examination was had and held on this charge before William Caldwell, a justice of the peace in and for Seattle precinct, King county, State of Washington; that at said preliminary examination the State of Washington was represented by John F. Miller, prosecuting attorney, and the defendant was present in person and was represented by his counsel, Fred H. Peterson; that at said preliminary examination the defendant, by his counsel, waived the preliminary hearing and was held to await the action of this court without bonds upon said charge; that thereafter, on August 25th, 1894, an information was filed in this case.

JOHN F. MILLER.

Subscribed and sworn to before me this 25th day of August, 1894.

T. W. GORDON,

[SEAL.] *County Clerk and ex Officio Clerk of the Superior Court,*

By J. B. GORDON, *Deputy.*

By permission filed Aug. 25, 1894.

T. W. GORDON, *Clerk.*

43 In the Superior Court of King County, State of Washington.

STATE OF WASHINGTON, Plaintiff, *vs.* HENRY CRAMER, Defendant. } No. —. Notice of Employing J. L. Green as council.

Notice is hereby given that I have this 3rd day of October, 1894, employed Joseph L. Green as my attorney and councilor in the above-entitled cause, and I hereby authorize him to appeal in court in my behalf and attend to all my interest herein.

HENRY CRAEMER.

Filed Oct. 3, 1894.

T. W. GORDON, *Clerk.*

44 In the Superior Court of King County, State of Washington.

STATE OF WASHINGTON, Plaintiff,
vs.
HENRY CRAEMER, Defendant. } No. 1054. Motion for Continuance.

Comes now the defendant in the above-entitled cause and moves the court for a further continuance of the hearing of the motion for a new trial for the following reasons:

1st. Because new and material evidence can be procured which cannot now be presented to the court.

This motion is based upon the following affidavit hereunto attached.

HUMPHREY & GREEN,
Attorney- for Defendant.

45 STATE OF WASHINGTON, } *ss:*
County of King, }

I, Joseph L. Green, one of the attorneys for Henry Cramer, deposes and says that I am informed by creditable persons that there is such a man as Jack Quincy, and that he was in the State of Washington on or about the 13th day of August; that I verily believe that he is now in the State of Washington or British Columbia, and that if a continuance can be had for thirty or sixty days that said Jack Quincy can be produced, and that I have other material evidence in my possession, the nature of which is such that in all probability justice would be defeated by being made public at this time.

JOSEPH L. GREEN.

Subscribed and sworn to before me this 12th day of October, A. D. 1894.

R. J. HUSTON,
Notary Public in and for the State of Washington,
Residing at Seattle.

Filed this 13 Oct., 1894.

T. W. GORDON, *Clerk,*
By P. D. HUGHES,
Deputy Clerk.

46 STATE OF WASHINGTON, } *ss:*
County of King, }

In the Superior Court of King County, State of Washington.

THE STATE OF WASHINGTON, Plaintiff,
vs.
HENRY CRAEMER, Defendant. } No. 1054.

I, T. W. Gordon, county clerk of King county and *ex officio* clerk of the superior court of said county, do hereby certify that I have compared the foregoing copy with the original affidavit of J. F. Miller, notice of employment of J. L. Green, motion for continuance

and affidavit in support in the above-entitled cause as the same appears on file in my office, and the same is a true and perfect transcript of said original and of the whole thereof, being intended as a supplemental record on appeal, sent at request of State.

Witness my hand — the seal of the said superior court, [SEAL.] at my office, in Seattle, this 6th day of June, 1895.

T. W. GORDON, *Clerk*,
By J. B. GORDON,
Deputy Clerk.

Indorsed: Supplemental record on appeal. Filed Jun- 7, 1895. C. S. Reinhart, clerk.

47 THE STATE OF WASHINGTON, Defendant in Error,
—
HENRY CRAEMER, Plaintiff in Error. } No. 1719.

48 *Index.*

Proceedings in supreme court of State of Washington.

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49 STATE OF WASHINGTON, Respondent,
vs.
HENRY CRAEMER, Appellant. } No. 1719. Filed July 3d, 1895.

Appellant, Henry Craemer, was convicted in the superior court of King county of murder in the first degree and sentenced to death. From the judgment of conviction and an order denying his motion for a new trial he has appealed.

The record discloses that appellant was arrested on August 14, 1894. On August 17, 1894, he was taken before the committing magistrate for the purpose of a preliminary examination; that agreeably to the right conferred by statute in such cases he waived exam-

ination and was committed without bail; that on August 25, 1894, he was arraigned in the superior court upon information filed therein charging him with murder in the first degree for the killing of Philipina Mueller on August 13, 1894; that to the crime so charged he entered his plea of "not guilty," and the court thereupon fixed September 7, 1894, as the time for trial. It further appears that from the time of his arrest he was attended by counsel.

The alleged errors relied upon for a reversal of the conviction will be considered in the order in which they appear in appellant's brief. The first error assigned is the overruling of the motion by appellant for a continuance. This motion was based on the affidavits of himself and Mary Craemer, his wife, and N. Soderberg, his attorney. The continuance was sought for the alleged purpose of securing the testimony of one Jack Quincy, by whom appellant in his affidavit stated that he could show that he (appellant) went to Tacoma (distant some thirty miles from the scene of the killing) on the afternoon of the day of the alleged murder to meet
50 said Quincy; that said Quincy and appellant spent a portion of the afternoon of said day in Tacoma, and that during said time Quincy paid appellant the sum of $35; that said Quincy was a miner, with no fixed place of abode, and was at the time when said affidavit was made supposed to be absent somewhere in the Cascade mountains, in the neighborhood of Monte Cristo, in Snohomish county. The affidavit of Soderberg was to the effect that some seven days before the trial he caused two letters to be addressed to the said Quincy, one mailed to Tacoma, Washington, and the other to Monte Cristo; that four days later he caused a subpœna to be issued for said Quincy and placed the same in the hands of the sheriff of Snohomish county for service, without any definite direction as to where said alleged witness could be found.

This, in brief, constituted the showing made for a continuance, and we think that it failed to meet the requirements of the statute respecting diligence. The migratory habits of Quincy being well known to appellant, the necessity of locating and keeping him located in order to secure his testimony at the trial was a matter that due diligence required of him and his counsel. Accused of this crime within a few hours after its alleged commission and within less than one day from the time when he claims to have been in the company of Quincy, he apparently made no effort to secure his attendance or to keep advised of his wanderings. In this connection, we may add that the affidavits generate a doubt, which is strengthened by the circumstances established upon the trial, as to the actual existence of the so-called Quincy; but, be that as it may, we do not think that the appellant used such reasonable means as were within his power to secure the attendance of the so-called Quincy, and the motion for a continuance was properly denied.

51 It appears from the evidence that the infant child of the deceased was murdered at the same time and evidently by the same hand that destroyed the mother's life, and it is next

contended that the court erred in admitting evidence of the killing of the babe. The general rule is that in the trial of a defendant for a specific offense evidence tending to show the commission of other distinct offenses is inadmissible, but this general rule admits of many exceptions. One of these exceptions is that where two crimes are connected both may be proved.

Kennedy *v.* The State, 107 Ind., 144.

Here the two homicides were so intimately connected with regard to time, place, circumstances, and the means employed to effect death that proof of the killing of the babe was necessarily involved in a complete description of the offense charged against the prisoner and constituted a circumstance in the history of the crime charged incapable of being separated from it in describing the condition and appearance of the mother and the premises where the killing occurred; but, aside from this, it appears from the record that no objection of any character was made to the reception of this evidence at the trial, and the settled practice does not admit of its being urged for the first time upon appeal.

Sears *v.* Seattle, etc., Street R'y Co., 6 Wash., 227.

People *v.* Baird, 38 Pac. (Cal.), 633.

The court did not err in admitting the testimony of Mrs. Smith and Laura Cushman, witnesses for the State, who testified to having seen the prisoner in the brier bushes adjoining the deceased's residence thirteen days prior to the homicide. The theory of the State was that robbery was the motive leading to the murder, and the presence of the appellant at that time was a circumstance which we think the jury was entitled to consider; nor was it error to permit the witness McCormack to testify to finding a revolver
52 upon the premises of the deceased some eighteen days after the homicide. This revolver was identified as the property of the appellant, and its discovery was also a circumstance to be weighed by the jury. The testimony on the part of the State as to the amount and character of the money found in the possession of the wife of appellant, if not strictly competent, was not, we feel confident, prejudicial to the appellant.

At the close of the evidence at the trial appellant's counsel requested an adjournment for the purpose of calling a witness concerning whose testimony, it was stated to the court, counsel had just been advised. The application was denied, and this refusal of the court is made the ground for specific assignment of error. If the record disclosed that there was in fact a person whose testimony could have been secured upon reasonable adjournment had, and that such testimony was material to appellant's case, we should not hesitate to say, considering the great importance of the issue, that the refusal of the court to grant a reasonable continuance would be error; but no such condition is presented by the record. The name of the witness is not given nor his residence stated, nor is the materiality of the proposed testimony made to appear. We cannot say from the record that the cause of the appellant was prejudiced by the refusal of the court to grant the adjournment.

We think the charge of the learned judge fully covered the different phases of the case as presented by the evidence and correctly stated the law.

The last proposition contended for in the brief of appellant is that "the evidence, taken as a whole, is insufficient to support the verdict rendered." The killing of the deceased occurred at her home, in the city of Seattle, between seven and eight o'clock on the evening of August 13, 1894. This home consisted of a small wooden house containing five rooms, three of which were located on the first floor and occupied by the deceased, her husband, and
53 three children, the youngest of whom, a baby, was killed at the same time and place and evidently by the same hand and by the same means made use of to effect the mother's death. The upper rooms in the home were occupied by two lodgers. The deceased was found dead by her children and some of the neighbors about the hour of eight o'clock p. m. She was lying on the floor in the middle room. There was a compound fracture of the nose and compound fracture of the maxillary bone on the left side; her skull was fractured in front of the left ear and there were other cuts and bruises on her face, the cause of death being assigned to the fracture of the skull, with hemorrhage. The baby had a fracture of the skull near the angle of the orbit on the left side and was found lying on the bed in the same room with the mother. The character of the wounds was such as to indicate clearly that they were made by some blunt instrument. Upon the window sill in the front room downstairs was found a carpenter's claw-hammer smeared with blood, which was evidently the weapon with which both mother and child were killed. A towel, bearing bloody finger-marks, was found in the kitchen. A trunk of the deceased had been broken open and the sum of two hundred and forty dollars in gold coin stolen therefrom; the other contents were scattered about the room in confusion. The rooms upstairs had also been rifled, clearly and unmistakably indicating that robbery was the motive which actuated the murderer. An attempt had been made to fire the premises, and the body of the mother had been placed upon some bed clothing in the center of the middle room, the clothing saturated with kerosene extracted from a lamp, and books, papers, and chairs piled thereon.

It appears from the evidence that appellant occupied with his family a house in the neighborhood of the deceased. The husband of the deceased and appellant were for a short period fellow-workmen in a brewery, but at the time of the homicide and for some months previous thereto appellant had been out of employ-
54 ment and was in straightened circumstances. A piece had been sawed from the handle of the hammer found upon the premises where the killing was committed, as above stated, evidently for the purpose of shortening it and making it of more convenient size for carrying in concealment. This hammer was identified as the property of the deceased, and the missing end was also found on the day following the murder in a shed upon the premises of the appellant. Upon further search of the premises the sum of $200 in gold coin was found in a miter-box upon a beam of the said shed. On the night of the murder appellant had given his wife some $29, which

sum, in connection with the amount so found and other items expended by the prisoner prior to his arrest and subsequent to the killing, aggregated about the amount that was stolen from the premises of the deceased. Appellant disclaimed any knowledge of the money so found upon his premises, and contended that the money which he had given his wife was a part of the proceeds of the sum of $35 which had been paid him by the so-called Quincy, as set out in his affidavit for continuance heretofore referred to.

Harry Gyer, a witness for the State, testified to having seen appellant at about a quarter to seven of the evening of the day of the killing, and at that time appellant was standing in the brush at a point about two hundred feet from the home of the deceased; that he was then looking towards the said house; was partially concealed by the brush and quite motionless. As already adverted to, the appellant had been seen in that vicinity some thirteen days prior to the killing under circumstances which, we think, create a degree of suspicion, but at that time he was aware that his presence had been discovered. The husband of the deceased and the two lodgers referred to had left home shortly before or about seven o'clock upon the evening of the homicide and gone into
55 the city to attend a labor meeting, at which they remained until apprised of the homicide at about the hour of half after nine.

Appellant, prior and subsequent to the time of his arrest and upon trial, insisted that upon the day of the homicide he had taken a steamboat at about the noon hour for Tacoma, where he arrived about two o'clock, and that he remained there until about seven p. m., returning to Seattle on the steamer "Flyer," and arriving at the latter place about 9.30 p. m. or some time after the homicide had been committed. It appeared that there was considerable music on the boat upon its return trip, but, being questioned concerning, it appellant stated that he heard none of it, and upon being questioned concerning the presence upon the boat of different persons with whom he was acquainted and who were shown to have been passengers and employees thereupon he was unable to state that he had seen any of them.

It would be neither practicable nor profitable in this opinion to fully review the evidence. The record is very voluminous and abounds in circumstances which convince the mind of the appellant's guilt. From a full examination of the case we think the evidence is amply sufficient to sustain the verdict, and that the record discloses no error requiring a reversal.

The judgment of conviction is affirmed and the case remanded to the lower court, with directions to proceed to appoint a day for the carrying of its sentence into effect according to law.

GORDON, *J.*

We concur:

HOYT, *C. J.*
ANDERS, *J.*
DUNBAR, *J.*
SCOTT, *J.*

56 In the Supreme Court of the State of Washington.

STATE OF WASHINGTON, Respondent,
vs.
HENRY CRAEMER, Appellant. } No. —.

Petition for Rehearing.

Dore & Cross, Relfe & McCutcheon, attorneys for appellant, Seattle, Washington.

57 In the Supreme Court of the State of Washington.

STATE OF WASHINGTON, Respondent,
vs.
HENRY CRAEMER, Appellant. } No. —.

To the honorable the justices of the supreme court of the State of Washington:

Respectfully petitions and represents Henry Craemer, the appellant in the above-entitled case, who prays that a rehearing be granted him under the laws and practice of this State, and for argument on said petition presents the following reasons for his application:

If the opinion of this court stands the life of the appellant must be sacrificed. We are confronted with this fact at the outset. Should a new trial be granted him and his case carefully prepared and properly presented to court and jury he would be pronounced innocent, but, innocent as he is, unless the mandate of your honors is stayed in a few short months he will be no more; in other words, the life of the defendant is in your hands; when taken it is not in your power to restore it.

We ought to be frugal of human blood. In China, for more than 4,000 years, the meanest subject at the extremity of the empire has not been executed without first transmitting his case to the Emperor, who causes it to be thrice examined by one of his tribunals, after which he signs the death warrant, alters the sentence, or entirely acquits. In England no criminal is put to death whose death warrant is not signed by the Queen. This is the practice, also, in Germany. Such, likewise, was formerly the practice in France, and such it ought to be in all civilized nations. In this State, as in many others in the United States where capital punishment exists, the last resort for one in the position of the appellant is the Supreme Court, the members of which are more en-
58 lightened, less liable to prejudice, and better qualified than the judge and jury who tried the appellant to pass upon the law and evidence in the case as it appears from the record.

When the appellant in this case was arrested and charged with the murder of Mrs. Mueller and her babe he stood helpless and alone. It is true he had his wife, who does not speak a word of English, and his three little helpless children. He is a foreigner, illiterate and speaking broken English. Friends and relations, who could or would be of no assistance to him, were not in this State.

In this position, is it to be wondered at that a blur came across his vision, and out of the strain of anxiety the present melted into the past? No doubt hundreds of incidents of childhood, boyhood, manhood, flashed across his mind in the fleeting panorama which presented the years of his life in the face of a moment. As the review proceeded the haze gradually lifted, the picture became clearer and clearer, and then out of the past came the present again. As if awakening from a terrible dream, his eyes suddenly dilated to view the last picture of all and the saddest—himself and his surroundings. He finds himself accused of one of the most diabolical murders in the annals of this State. From a perusal of the statement of facts we can judge of the pitiable position of the appellant after his arrest. What a pathetic tale appears on pages 391, 392, and 393 of the statement of facts! It is a voice in the night.

"Then another thing. I never been arrested. I never was in court before. I didn't know how to behave against them officers who were inquiring anything of me. I told them the whole story right in the start, everything what I done in Tacoma and where I been—everything—and the next morning that gentleman (meaning the detective) that was sitting here, he tried, it seems to me, insisting that I told him that night before I came in on the railroad, but I never did. I told him that same night I came out on that bridge there. That same evening when they got me up in the
59 police office again the chief of police, he been telling me—it seems to me he wanted to scare me some way or other—that he got any power to act with me. He could make me a great man; could tell me go out of doors and be a free man if I told him what he wants to know, and if I didn't tell him he would force matters that way. He told me about there is a chain. It is a broken chain, and I have got to have every link to put in that chain, and if you don't tell me what I want to know I make every link come into this *claim*. Well, I told him, 'Chief, I can tell you no more than what I told you already, and that is all I can tell you,' and he put me down to prison again.

"Q. Have you been in close confinement since the 14th of August? Have you been in jail ever since?

"A. Yes, sir; and I told the chief the same day I have been arrested to go right down to that saloon and inquire about that man, and there has nobody been coming to me to look for me. The first time I saw somebody else was here up in court, when—I don't know what is the name—when I got examination or whatever you call it. I insisted that somebody go down to that saloon and bring up that barkeeper—I couldn't tell the name—and ask them to bring that man up to see me, so that he could identify me, and I give him a five-dollar note they exchanged for me, and I told him he must know that from last night, and the proprietor from that place and the bartender, I think they both of them must know me when they see me.

"Q. Do you know the name of that saloon?

"A. I don't know the name of that saloon.

"Q. Do you know the name of that proprietor?

"A. What I heard from other people speaking—'George;' they addressed him as George. I never spoke to any of them, only when I went in there and got what I wanted; never got in conversation before; it is not my habit.

"Q. What efforts have you made to try to find Jack Quincy since you were put in jail?

60 "A. Well, the first man I showed about it was Mr. Peterson. At my examination I told him everything about it, and he told me he would see that I get a lawyer appointed from the court, and I told him everything I know about Jack Quincy and where he maybe could be found in Tacoma, if he didn't leave there."

This story is as simple and touching as the talk of Little Jo in "Bleak House," when he relates his knowledge of the world as viewed from Tom-all-alones.

That the court considered this case of great gravity appears from the statement contained in the opinion "considering the great importance of the issue." This being so, we have no doubt that this petition will be carefully considered by this court. It is evident that the court has followed very closely the opinions and statements expressed in the brief of the respondent, and by its doing so the errors that appear in the opinion are to be accounted for. The court had a right to rely upon the statement of the prosecuting attorney of King county, and we do not intend imputing to him a desire to mislead this honorable court, but this he has certainly done, and the reason for it is explainable.

The gentlemen who prepared the brief in behalf of the State were not the gentlemen who tried the case in the superior court, and they were not sufficiently familiar with some of the facts contained in their brief to have vouchsafed the opinions therein expressed. They, on page 2 of their brief, set forth the fact that "through the instrumentality of friends, Fred H. Peterson, Esq., was immediately thereafter procured as attorney for appellant, and as such consulted with and advised appellant."

On page 3 of their brief they say that "N. Soderberg, Esq., who, on the 21st day of August, 1894, was substituted as his counsel instead of said Fred H. Peterson, Esq." Search the record in this case through, and you will be brought irresistibly to the conclusion that there is no authority for the statements of the prosecutor above quoted.

61 From reading the quotations referred to but one opinion could be formed regarding the position of the defendant before trial, and that was that at all times from August 14, 1894, the date of his arrest, up to the date of his trial he was attended by counsel. This, to the detriment of the defendant, is the view taken of that fact by this court, for on the first page of the typewritten copy of the opinion we find this language: "It further appears that from the time of his arrest he was attended by counsel."

The facts in connection with Craemer and his having an attorney are these:

Mr. Peterson was present at the preliminary hearing, held August 17, 1894, and advised appellant to waive an examination. The wisdom of waiving examination in a capital case has very often been questioned by able jurists. The next service that was rendered him by counsel was when N. Soderberg was appointed by the court to defend him, which was on the 21st day of August, 1894. (Page 393 of the statement of facts.)

Appellant was in jail; he was without friends, without money. His wife, who has always been his helpmate, became powerless to procure assistance to go to or from Tacoma, where it was claimed Jack Quincy was at that time sojourning. On paper it looks as though it would have been an easy matter to reach Quincy at Tacoma; but with all the gloom that surrounded this family, the serious charge against the head of it, their poverty—for it must be borne in mind that the money that Mrs. Craemer had was taken from her by the police—it was no easy task to institute a search for Quincy without some money; and it is this very helplessness, this impecuniosity, that prevented him from procuring testimony that would have exonerated him before the world—yes, it is these things that called forth the censure of this court for not having Quincy present at the trial.

This brings us to the question of the degee of diligence set forth in the affidavit for a continuance. The importance of the
62 presence of Jack Quincy cannot be questioned. The police at the time of the arrest of Craemer knew that he claimed to have seen Quincy at Tacoma. The then prosecuting attorney knew of the same claim of appellant, and neither of them made the least attempt to ascertain the truth of the statement or see if he could be found. They seemed too busy looking for circumstances that would lead up to the establishment of his guilt. Anything that might throw light upon his innocence was cast aside or lost sight of. Even the request of the appellant that the police go to a saloon in Seattle, where it was claimed that he called after his return from Tacoma, this request*ion* being made a few hours after his arrest, was denied him. Now, it does seem to us that a denial to attempt to seek these men out by the prosecution when requested to by Craemer was like denying a dying man a glass of cool, refreshing water. The law of this State recognizes the fact that under certain circumstances a defendant has the right to ask for a continuance, and it seems to us that it should be granted in a case like this one, where a man's life is in jeopardy, and the application for a continuance is the first one that has been made.

2 Hill's Code, sec. 1296.

The continuance in this case was denied, and why? Because the appellant's counsel did not use proper language in his motion for a continuance, or, losing sight of the importance of the cause entrusted to him, he did not make a stronger effort to procure the attendance of Quincy. But in this connection we must not lose sight of the fact that the superior court of King county is responsible for these things and not the appellant, for they who defended

this case were selected for appellant by the court. Now, it seems to us that the very helplessness of the appellant should have appealed to the court, first, to see that he was properly defended, and, secondly, that a sufficient length of time was given to prepare his case. This atrocious murder was committed on the night of August 13, 1894. On the 14th of August, 1894, the appellant was
63 arrested and charged with the murder. He was taken before a magistrate and waived examination by advice of council. Information was filed against him by the prosecuting attorney, asked to plead, and within a period of twenty-four days from the date of his arrest he was placed on trial for his life. A few days thereafterwards he was convicted of murder in the first degree.

The constitution of the State of Washington, referring to the rights of the accused, provides, among other things, that a defendant shall "have a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed."

Constitution of State of Washington, sec. 22.

In other words, that one charged with crime shall not be compelled to languish in jail without a chance of being heard. This being so, we think that the converse of the proposition should also hold good, and that is that a man under circumstances similar to appellant should not be railroaded to the gallows. The defense that was interposed at the trial was an alibi, a defense at best looked upon with suspicion by both court and jury; yet, if established, it has but one effect—the acquittal and exoneration of him who sets it up. What was to be lost by a simple continuance for two weeks or a month if it would have established the fact that a husband and father was guiltless of the crime charged against him? Why, if what he claims was true, the real offender might have by this one act alone been discovered. The only reason, as already alluded to, for not granting the motion was by reason of certain phraseology recognized by law having been omitted from the pleading. It seems to us that in criminal procedure in this State further simplification is needed. The forms of motions for a simple continuance are verbose and puzzling as a pleading at common law. For whose benefit is this? Surely the average, ill-educated prisoner can scarcely be expected to appreciate the full flavor of ponderous pedantry. The satire of the situation is strikingly displayed in this case. The re-
64 spondent refers to the migratory character of Jack Quincy in its brief, and this court refers to him in the same language. Now, the very fact that this man Quincy was a nomad is sufficient reason why appellant should have had a longer time to search for him.

The respondent, in its brief in support of the position that a continuance should not have been granted upon the showing of the appellant, cites to your honors eleven cases. Now, these cases are not of the character or importance of the case at bar. The defendants therein are charged with horse-stealing, card-playing, or some like offense. There is but one homicide case in the number, that the case of Brown *vs.* State (Tenn.), 2 S. W., 895, and we find from

the opinion in that case that it is not a case in point, and, if anything, the reasoning of that court would warrant us in saying, had the showing been made to that judge that was made in this case, the continuance would have been granted. It seems to us that the cases cited by appellant should have been followed by this court, especially the case of State *vs.* Hagan, 22 Kansas, 343. This is so near in point that we cannot refrain from quoting it.

"The defendant was in jail without means. He had to rely upon letters and friends for information. He wrote without delay and continued to write. He could not compel answers and he could not go himself to make inquiries. His situation was very different from that of one out on bail and able to go in search of testimony or of one with ample means to employ assistants. Reasonable diligence was, of course, essential. But what more could defendant do? Counsel for the State say that the whole defense was a sham and it was apparent to the district court. But how could the court say from the affidavit that it was a sham or that the efforts of defendant were not in good faith? The defendant swears that the witnesses would testify to the facts, and that he believes those facts to be true. There was nothing impossible or even improbable in such testimony, and the defendant ought to have had an opportunity to obtain it, if possible. Grant that he might have commenced
65 taking depositions at the very day of his arrest, yet he did not know where these witnesses were, and not until just before the convening of the court and the filing of the information did he discover where they were. The defendant was presumed to be innocent. His efforts were apparently in good faith, and the testimony he sought was very material. It will not do to say that such testimony was false or that his efforts to obtain it a mere pretense. If the witnesses sought should testify as stated, it will be for the jury to say whether such testimony is true. It cannot be pronounced false in advance, and a party should not be held lacking in diligence who uses all the means at his disposal to obtain his testimony."

Other cases equally strong and in point are the cases of—

Hunt *vs.* Com. (Ky.), 24 S. W., 623.

How *vs.* State, 17 S. W. (Texas), 1094.

II.

In the opinion in this case, on the question of the admissibility of testimony relating to the child, its condition, etc., we find this language: "But aside from this it appears from the record that no objection was made of any character to the reception of this evidence at the trial, and the settled practice does not admit of its being urged for the first time upon trial."

Is Craemer responsible for this? Why should he be held responsible for all the short-comings of counsel who defended him, and that gentleman selected by the court?

III.

Now, regarding the decision of the court on the point where testimony was sought to be introduced after the testimony was closed and before argument, do not lose sight of the fact that the man was on trial for his life; the court convened at 9.30 a. m., took a recess at 12 o'clock, resumed the trial at 1.30, continuing until 5. p. m., then adjournment had until 7.30 p. m., and trial proceeding until 11 p. m. This is what occurred the last day of the putting in of testimony: A witness strays away; in the morning he puts
66 in an appearance, and before final arguments are made counsel calls the court's attention to his presence at that time in court, asks that he be permitted to put him on the stand, and this is denied him. The name of the witness was announced to the court, as appears from the record. And right here we desire to call the court's attention to the incidents connected with that scene by quoting from the record:

One pages 416 and 417 of the statement of facts we find the following in relation to the introduction of testimony that could not have been procured earlier:

"Mr. MILLER: We close.

"Mr. SODERBERG: If your honor please, a few minutes ago information has come to me about some testimony that I consider very important. We could not have discovered it by the use of any diligence. I do not want to state here the nature of it, and it is very important, in my opinion, and would be very injudicious to state it here. Unless we can have an adjournment till tomorrow morning, I shall tomorrow morning apply to reopen the case for the introduction of that evidence. I cannot get it at this moment, but I have sufficient information to know that it is attainable. It is very material. I should like, if your honor please, that we go no further with the taking of testimony tonight. It is a brief matter, but very important.

"The COURT: In the absence of anything to show what the evidence is, the nature of it, what you expect to prove——

"Mr. SODERBERG: No objection, if your honor please, to stating it; will state—your honor's judgment about it, whether I ought to state it publicly or privately to your honor—I will state it publicly if your honor thinks best.

"The COURT: Even on the statement of counsel, the court would not be justified in continuing this cause.

"Mr. SODERBERG: We say now we will make affidavit to reopen the case as soon as that evidence is attainable.

67 "The COURT: Anything further in rebuttal? Proceed with the argument of the case, gentlemen.

"Mr. SODERBERG: If your honor will suspend one moment, I may be able to make a showing now in reference to that evidence. It seems, if your honor please, the witnesses have absented themselves from the court, and for that reason I can't make a showing at this time. I ask, however, for a subpœna for one witness who has

not appeared on the part of the prosecution. I want him here tomorrow morning—August Rother.

"The COURT: Proceed, gentlemen, with the argument of the case.

("Argument taken until 9.30 a. m., after counsel for the State had completed his opening argument.)

"Morning session.

"Mr. SODERBERG: If your honor please, on last night I gave notice of application to reopen the case. I have my witnesses here now. I do not want to be required to make a formal showing to obtain that privilege. I declare to the court and to the prosecuting attorney if you will allow me to put the witness on the stand it won't take but a minute.

"Mr. MILLER: We shall certainly object to it now.

"The COURT: Proceed with the argument. Exception."

It is difficult to imagine a more strenuous effort than that set forth to obtain a hearing, and each attempt is cut off with the court saying, "Even on the statement of counsel the court would not be justified in continuing this cause." "Anything further in rebuttal?" "Proceed with the argument of the case, gentlemen." "Proceed, gentlemen, with the argument of the case." "Proceed with the argument." Your honors say that is these requests were properly presented to the court and the court denied them you would not hesitate in saying that there was error, and that the case would be reversed and sent back for trial. Well, again, why did the court appoint to defend this man counsel who could not properly present a request so simple in form and so great in its effects?
68 Why should this ignorant appellant stand charged with the apparent negligence of counsel? Why, even if the request should have been poorly put, was the appellant refused the opportunity of throwing light upon his conduct on the day of the murder?

IV.

In States where capital punishment is in vogue a man's life is never sacrificed, but in evident necessity. On what, we ask, is based the necessity in this case? If the record discloses anything, it simply relates to circumstantial evidence and a large quantity of inadmissible testimony that counsel permitted the prosecution to offer without objection. The case under discussion is one where humanity should save whom the law has condemned to suffer.

If Craemer took the life of Phillipina Mueller and her child, then assuredly he should suffer the penalty that the law imposes; but if there is a reasonable doubt of his guilt, or if he be guiltless, then he should not be sacrificed. Men have been convicted of murder in the first degree in this State on circumstantial evidence, and the

court did not hesitate in saying that such evidence was insufficient to warrant such a verdict.

State *vs.* Frederick, 4 Wash., 204;
State *vs.* Pagano, 7 Wash., 549; and
State *vs.* Robinson, decided during the present month.

It is difficult to imagine two cases more alike in circumstances than the one under discussion and the case of State *vs.* Pagano, and we cannot resist quoting the language of Chief Justice Hoyt in that case, and claiming that the language is specially applicable to this case:

"In our opinion the criminating circumstances, if such they may be called, were all reasonable consistent with the innocence of the accused; that the most that was established by them was that there was a probability that he was the guilty party; but it is not
69 the policy of the law that a person should be convicted of crime, especially a capital one, upon the doctrine of probabilities, and, even if it was, at least one other person was by the proofs in the case shown to have been as probably the guilty party as the accused. The only theory upon which the verdict of the jury can be accounted for is that there was at the time great excitement growing out of the atrocity of the murder, together with the fact that the accused was a foreigner, and by the jury, to some extent, no doubt, believed to be of an inferior and vindictive race."

Would that it were allowable at this time to show to this court, by evidence obtainable, facts and circumstances within the knowledge of the attorneys for appellant, then would we be assured that no harm could possibly come to this appellant.

It seems to us that the highest court of this State should not on such grounds allow this great wrong to stand against a helpless man.

One of the circumstances that this court relies upon is the fact that on the night of the homicide there was $240 in the house of decedent, and that the money in the possession of Mrs. Craemer and that found in her shed so nearly corresponded with that in the house that it must necessarily be the same money. In this connection, if we examine the testimony of John Mueller, husband of decedent, on page 58 of the statement of facts, we will find that, instead of there being in the vicinity of $240, it was the sum of $300 that was in the house.

Another circumstance that seems to weigh with the court is the fact that the Craemer family was in straightened circumstances. This should not tell against him, for how many men in his walk of life are similarly situated? Our idea of the facts is that he was in a position as good as hundreds in this community.

It is evident that this court is under the impression that the piece of hammer found on the Craemer premises was sawed from the hammer found in the Mueller house. Were this so, it cer-
70 tainly would be one of the strongest circumstances in the case; but from the evidence this circumstance cannot tell

against appellant, for there was an absolute failure to connect the two together. (Statement of facts, pp. 183 to 187.)

His not hearing music on board the Flyer is used against him. It is a matter of common knowledge among patrons of the Flyer that when the boat leaves either Seattle or Tacoma there is no music played aboard the boat, but after it has sailed from fifteen to twenty minutes three pieces are used—harp, violin, and flute. The length of time that they play depends entirely upon the generosity of those aboard the boat. Now, one sitting where Craemer sat would not hear the music that was played on the inside of the boat within a few feet of its bow. Again, the presence of an acquaintance on the boat might not have been known to one traveling on it, for it has two cabins, one on the first deck, the other on the upper deck, so the absence of this knowledge regarding music and people on the boat should not be taken against him. Much is made about his presence about the Mueller house. If the locality is as much as the testimony would have us believe, the appellant's presence is accounted for by the fact that he was a neighbor and had the same privilege to pick berries there that others had. Now, the fact is that he was not a neighbor, but lived three-quarters of a mile from them, and those who testified to his being there that night have either perjured themselves or are mistaken. A careful perusal of the testimony of Guyer concerning the bribe ought to be sufficient to make a court hesitate before accepting his other testimony. It must be remembered that the day before the homicide Mueller and his wife were at a picnic. They had with them the money in question; it was there displayed. Now, the appellant was not at that picnic, and there is not a single scintilla of testimony going to show that he had any knowledge that there was money in the house; and we are of the opinion that the assassin was aware of its presence when he went there to do his hellish work.

Again, from the character of the killing, what transpired
71 in relation to the dragging of the body, the handling of things in the house, is it, we ask, possible that appellant could have done all these things without blood being found on his clothing? Guyer says he had on the light suit of clothes on the night of the homicide, and not a single drop of blood is found on Craemer or his clothing. With the history of the past to guide us in making up our judgments concerning the guilt or innocence of a man accused on circumstantial testimony, we should at least adhere to the strict letter of the law, and "that where a conviction for a criminal offense is sought upon circumstantial evidence alone the State must not only show by a preponderance of evidence that the alleged facts and circumstances are true, but they must be such facts and circumstances as are absolutely incompatible upon any reasonable hypothesis with the innocence of the accused and incapable of explanation upon any reasonable hypothesis other than the guilt of the accused; that to authorize a conviction upon circumstantial evidence alone the circumstances must not only be in harmony with the guilt of the accused, but they must be of such a

character that they cannot reasonably be true in the ordinary nature of things and the defendant be innocent."

Unhesitatingly we declare that from the record in this case it appears that the defendant did not have a fair and impartial trial. With the many mistakes that have taken place when men have been convicted on circumstantial testimony, we respectfully ask this court to afford us the opportunity of demonstrating the fact that appellant is guiltless in this case. It is in the power of the court so to do.

The dignity of the law and the State would be assailed if this court permit a man to be executed on insufficient testimony.

Respectfully submitted.

DORE & CROSS,
RELFE & McCUTCHEON,
Attorneys for Appellant.

Indorsed: Filed Aug. 2, 1895. C. S. Reinhart, clerk, by R. B. Crandall, deputy.

72 In the Supreme Court, State of Washington.

STATE OF WASHINGTON, Respondent,
vs.
HENRY CRAEMER, Appellant.
} No. 1719. Judgment.

WEDNESDAY, *August* 21, 1895.

This cause having been heretofore submitted to the court upon the transcript of the record of the superior court of King county and upon the argument of counsel, and the court having fully considered the same, and being fully advised in the premises, and having filed its opinion in writing, it is now, on this 21st day of August, A. D. 1895, on motion of A. W. Hastie, Esquire, of counsel for respondent, considered, adjudged, and decreed that the judgment of the said superior court be, and the same is hereby, affirmed with costs, the petition for rehearing denied, and that the said State of Washington have and recover of and from the said Henry Craemer the costs of this action, taxed and allowed at forty-eight dollars, and that execution issue therefor.

And it is further ordered that this cause be remitted to the said superior court for further proceeding in accordance with the opinion herein filed.

Record, vol. 4, page 139.

73 In the Supreme Court of the State of Washington.

STATE OF WASHINGTON, Plaintiff and Respondent,
vs.
HENRY CRAEMER, Defendant and Appellant.
} No. —. Petition.

To the honorable supreme court of the State of Washington and to the Honorable John P. Hoyt, chief justice of said court:

Your petitioner, Henry Craemer, most respectfully petitions and represents:

I.

That he is a citizen of the United States and was such at all the times hereinafter mentioned and especially at the time he was charged with the offense for which he was sentenced to death and thereafter.

II.

That on the 25th day of August, 1894, he was, by information filed by the prosecuting attorney of King county, John F. Miller, arraigned and charged with the crime of murder and was tried and convicted by a verdict of a jury and sentence was passed upon him of death on the 28th day of August, 1895; that he duly took an appeal to the supreme court of Washington; that, among other contentions in the lower court, he insisted that he was entitled to be indicted by a grand jury within the meaning of the 16th amendment of the constitution, as the alleged offense charged against him was infamous; also that it was contrary to his constitutional privilege to be denied ample opportunity for preparing his case for trial and the procuring a continuance for a sufficient length of time to enable him to procure witnesses to show his innocence; also that it was contrary to his constitutional privilege to be denied the right to place upon the witness stand witnesses to testify in his behalf at his trial; that before trial in the lower court the defendant interposed a demurrer to the information filed against him and
74 contended that he was entitled to be indicted by a grand jury within the provision of article 5, section 1, of the Federal Constitution; also and because that under the act of Congress of February 22, 1889, he claimed a right under said act of Congress to be indicted by a grand jury within the provisions of the Federal Constitution, for that said act of Congress, as he contended, gave him a right and a privilege to be indicted by a grand jury, in that, to wit, that said act of Congress was the enabling act admitting the State of Washington to the Union and ordained that the said constitution of the State of Washington should not be repugnant to the Constitution of the United States.

Also contending and urging upon the court that under the said act of Congress admitting the State into the Union it was his right and privilege to be indicted by grand jury and to be exempt from prosecution for his life upon information presented by a prosecuting officer; that he did contend that the true and proper construction of this act of Congress was that it was intended by such legislation admitting the State into the Union that the citizens then existing and thereafter should form a constitution which should be wholly consistent and harmonious and not repugnant and inconsistent either to the provisions of the Federal Constitution guaranteeing to citizens of the United States the privilege and benefit of being indicted by a grand jury for any offense that was infamous or punishable by death.

III.

That the said record before the supreme court of the State of

Washington duly presented the following questions and assignments of error:

A. That he did not have sufficient time in which to properly present his case to the court and jury, which was a violation of his constitutional privilege.

B. That he was denied the right to offer testimony during the trial of his cause in his behalf, which was in violation of his constitutional privilege, and denied compulsory process to compel the attendance of witnesses, and this petitioner's brief duly pre-
75 sented the said questions and the said supreme court of Washington did pass upon the said questions.

That had either of the said contentions of the defendant been granted and sustained no judgment could have been rendered against this petitioner.

That said honorable supreme court duly considered the said questions and the consideration and construction claimed by the said defendant and petitioner of his immunities and privileges under the Federal Constitution and decided adversely to his right and adversely to his claim of immunity and privilege, and that the said decision of the supreme court of the State of Washington denying to the defendant, the petitioner, the immunity and privilege as claimed by him under the Federal Constitution as a citizen of the United States was a denial to him of his right and privilege under the laws of the United States and under the Constitution of the United States, and that a decision upon the said questions was necessary by the supreme court of the State of Washington in order that a judgment could be rendered or entered against the defendant by the supreme court of the State of Washington, and that but for the said judgment rendered against the right, immunity, and privilege claimed by this defendant, under the Federal Constitution, as a citizen of the United States no judgment could have been rendered against him of sentence of death or other judgment.

IV.

That the decision of the supreme court of the State of Washington was made and rendered on the third day of July, 1895; that a due and proper petition for rehearing by the said defendant was duly made and filed, which was taken under advisement for the consideration of the above-named honorable court and was passed upon and denied and immediately ordered to be sent to the superior court of King county on August 21st, 1895; that thereafterwards, on August 28th, the defendant was called by the Honorable Thomas J. Humes for sentence in accordance with the mandate of the
76 remittitur, and that the Honorable Thomas J. Humes, judge of the superior court, in which said court the defendant was tried, did sentence this petitioner to be hanged by the neck until dead, in accordance with the mandate of the supreme court of Washington, and that said hanging of this petitioner be on the 1st day of November, 1895, under the execution and orders of the sheriff of King county.

That six months have not elapsed from the date of the judgment of the supreme court of the State of Washington, nor sixty days from the date of the judgment of the said supreme court and of this order from the said superior court of the county of King, and that there is no law nor procedure authorizing or permitting any further or other appeal to the said supreme court of the State of Washington from the said order and sentence of the said Honorable Thomas J. Humes, judge of the superior court of King county, Washington, condemning and sentencing this petitioner to death.

Wherefore and by reason of the premises this petitioner, through his attorneys, Messrs. Dore & Cross and Relfe & McCutcheon, most respectfully petitions the honorable chief justice of the supreme court of the State of Washington to allow him an order of appeal of his said cause to the Supreme Court of the United States upon such errors as will be and are duly assigned, wherein he may manifest and present such rights, privileges, and immunities as he contends are his under the constitution and laws of the United States and as he contends have been denied and refused him by reason of the law of the State of Washington, which he hath plead are repugnant to and contrary to and against the laws of the United States and the Constitution of the United States, under which he claims the rights, privileges, and immunities as herein set forth.

Also that your honorable court will, in granting the appeal, duly grant to this petitioner and order suspending his execution and staying the same until the said appeal shall be duly heard by the Supreme Court of the United States, and your petitioner will ever pray.

DORE & CROSS,
RELFE & McCUTCHEON,
Att's for Petitioner.

Indorsed: Filed Oct. 14, 1895. C. S. Reinhart, clerk.

77 In the Supreme Court of the State of Washington.

HENRY CRAEMER, Plaintiff in Error,
vs.
STATE OF WASHINGTON, Defendant in Error. } No. 1719. Order.

It appearing to the Honorable John P. Hoyt, chief justice of the supreme court of the State of Washington, the highest court of said State, and the court wherein final judgment was rendered in the above-entitled cause in favor of the respondent in said cause and against the appellant therein, in which said court the record of said cause now is by petition of the defendant and appellant for a writ of error to the Supreme Court of the United States, and by appellant's assignments of error accompanying said petition for said writ, and by the record in said cause, that said cause is one wherein is involved the question whether or not the decision and judgment of this court rendered in the said cause affirming the judgment of the lower court has the effect of depriving the appellant of his rights

under the Constitution of the United States in this, that he was denied a sufficient time in which to prepare his case for trial and in which to procure testimony in his behalf, and that he was denied compulsory process to compel the attendance of witnesses at his trial, and that he was denied the right to introduce testimony in his behalf—

Now, therefore, upon motion of attorneys for appellant in said cause and plaintiff in error, it is

Ordered that a writ of error to the Supreme Court of the United States is hereby allowed, and the judgment and sentence of the supreme court of the State of Washington and the superior court of King county, Washington, be stayed until judgment is passed by the Supreme Court of the United States.

Dated this 14th day of October, 1895.

JOHN P. HOYT,
Chief Justice of the Supreme Court of the State of Washington.

Indorsed: Filed Oct. 14, 1895. C. S. Reinhart, clerk.

78 In the Supreme Court of the United States.

HENRY CRAEMER, Plaintiff in Error,
vs.
STATE OF WASHINGTON, Defendant in Error.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable justices of the supreme court of the State of Washington, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the supreme court of the State of Washington, before you or some of you, being the highest court of law or equity of the said State in which a decision can be had in said suit between Henry Craemer, defendant and appellant in said cause and plaintiff in error in this court, and the State of Washington, plaintiff and respondent in said court and defendant in error in this court, wherein was drawn in question whether by virtue of the decision and judgment rendered in said cause by the supreme court of the State of Washington the said defendant and appellant therein and the plaintiff in error herein, Henry Craemer, has been deprived of rights under the Constitution of the United States, in that by said final decision and judgment of the supreme court of the State of Washington the rights of the plaintiff in error,
79 appellant therein, were held to be conclusively determined, and said plaintiff in error was denied sufficient time to prepare his case and to procure the attendance of witnesses to testify in his behalf, contrary to the Constitution of the United States, and wherein was drawn in question the right, privilege, or immunity claimed by plaintiff in error under article VI, amendatory to the

Constitution of the United States, and wherein the decision was against such right, title, privilege, or immunity specially set up or claimed by plaintiff in error under such clause of the Constitution, a manifest error hath happened, to the great damage of Henry Craemer, the plaintiff in error, as by his complaint and petition in said cause it appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington sixty (60) days after date hereof, in the said Supreme Court to be there and then held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error which of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of said Supreme Court, the 19th day of October, in the year of our
80 Lord one thousand eight hundred and ninety-five.

{ Seal United States Circuit Court, Northern Division, District of Washington. }

A. REEVES AYRES,
Clerk of the Circuit Court of the United States for the District of Washington,
By R. M. HOPKINS, *Deputy Clerk.*

Allowed this 23d day of October, 1895.

JOHN P. HOYT,
Chief Justice of the Supreme Court of the State of Washingto-.

81 [Endorsed:] 1719. In the Supreme Court of the United States. Henry Craemer, plaintiff in error, *vs.* State of Washington, defendant in error. Writ of error. Filed Oct. 23, 1895. C. S. Reinhart, clerk. Dore & Cross, attorneys-at-law, 616 & 617 Bailey block, Seattle, Wash. Relfe & McCutcheon, att's for plaintiff in error.

82 In the Supreme Court of the United States.

HENRY CRAEMER, Plaintiff in Error,
vs.
STATE OF WASHINGTON, Defendant in Error. } Assignments of Error.

Comes now Henry Craemer, plaintiff in error, and says—

That in that certain cause, pending in the supreme court of the State of Washington, in which the above-named Henry Craemer is defendant and appellant and The State of Washington is plaintiff and respondent, as shown by the record and proceedings therein, there is manifest error in this, to wit:

I.

That the supreme court of the State of Washington erred in affirming the judgment of the superior court of King county, Washington, and in causing final judgment to be entered in said supreme court, upon the 3rd day of July, 1895, in favor of defendant in error and against the plaintiff in error.

II.

That said supreme court of the State of Washington erred in not reversing the judgment of the superior court of King county, State of Washington, and in rendering any judgment whatsoever against the plaintiff in error.

III.

That said supreme court of the State of Washington erred in its said decision and judgment, wherein it affirmed the ruling of the superior court of King county, Washington, in holding that a continuance should not be granted to the plaintiff in error for the purpose of procuring the attendance of a witness who should prove his innocense, and that the plaintiff in error had sufficient time to prepare his case for trial.

IV.

That said supreme court of the State of Washington erred
83 in its decision and judgment wherein it affirmed the ruling of the superior court of King county, Washington, in holding that compulsory process should not issue for the attendance of August Rother, a witness who was required by the defense at the trial of plaintiff in error, and the refusal of the court to grant a delay of a few hours to prepare testimony of witnesses for plaintiff in error, as appears from the following:

Mr. MILLER: We close.

Mr. SODERBERG: If your honor please, a few moments ago information has come to me about some testimony that I consider very important. We could not have discovered it by the use of any diligence. I do not want to state here the nature of it, and it is very important in my opinion, and would be very injudicious to state it here. Unless we can have an adjournment till tomorrow morning, I shall tomorrow morning apply to reopen the case for the introduction of that evidence. I cannot get it at this moment, but I have sufficient information to know that it is attainable. It is very material. I should like, if your honor please, that we go no further with the taking of testimony tonight. It is a brief matter, but very important.

The COURT: In the absence of anything to show what the evidence is—the nature of it—what you expect to prove——

Mr. SODERBERG: No objection, if your honor please, to stating it; will state—your honor's judgment about it whether I ought to state it publicly or privately to your honor—I will state it publicly if your honor thinks best.

The COURT: Even on the statement of counsel the court would not be justified in continuing this cause.

Mr. SODERBERG: We say now we will make affidavit to reopen the case as soon as that evidence is attainable.

The COURT: Anything further in rebuttal? Proceed with the argument of the case, gentlemen.

Mr. SODERBERG: If your honor will suspend one moment I may be able to make a showing now in reference to that evidence.

84 It seems, if your honor please, the witnesses have absented themselves from the court, and for that reason I can't make a showing at this time. I ask, however, for a subpœna for one witness who has not appeared on the part of the prosecution. I want him here tomorrow morning—August Rother.

The COURT: Proceed, gentlemen, with the argument of the case.

(Adjournment taken until 9.30 a. m., after counsel for the State had completed his opening argument.)

That by reason of the said decision and judgment of the supreme court of the State of Washington affirming the judgment of the superior court of King county, Washington, wherein and whereby said supreme court committed error by affirming each of the various erroneous rulings and decisions of said superior court of King county above specified, and the effect of each of said rulings so affirmed was to render a decision in this case adverse to right, privilege, and immunity claimed by plaintiff in error under the Constitution of the United States and contrary to article VI of the amendments to the United States Constitution, which provides that—

"In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

That the rulings and decisions of said trial court above specified and of said supreme court of the State of Washington and each thereof were adverse to the rights, privileges, and immunities claimed by plaintiff in error under said constitutional provisions, and the effect thereof was to deprive him of his rights, and the same were greatly to the prejudice and injury of plaintiff in error, and that said decision and judgment and the proceedings relative

85 thereto are erroneous in many particulars; that said errors and each thereof vitally involve the decision and judgment of said supreme court of the State of Washington.

Wherefore plaintiff in error prays that the judgment of the supreme court of the State of Washington and the decision rendered by said court in said cause be reversed, and that judgment upon

the record in said cause be entered in favor of plaintiff in error and against defendant in error, and that said judgment be reversed.

DORE & CROSS &
RELFE & McCUTCHEON,
Att's for Plaintiff in Error.

Indorsed: Filed Oct. 23, 1895. C. S. Reinhart, clerk.

86 In the Supreme Court of the United States.

HENRY CRAEMER, Plaintiff in Error,
vs.
STATE OF WASHINGTON, Defendant in Error. } No. 1719. Citation.

UNITED STATES OF AMERICA, *ss:*

To The State of Washington and to the Honorable A. W. Hastie, prosecuting attorney for King county, representing the State of Washington:

You and each of you are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, within sixty (60) days from October 19, 1895, pursuant to a writ of error filed in the office of the clerk of the supreme court of the State of Washington, wherein Henry Craemer is the plaintiff in error and The State of Washington is the defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done the party in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 23rd day of October, 1895.

JOHN P. HOYT,
Chief Justice of the Supreme Court of the State of Washington.

Attest my hand and the seal of said supreme court this 23d day of October, 1895.

[Seal of the Supreme Court, State of Washington.]

C. S. REINHART, *Clerk.*

87 [Endorsed:] 1719. In the Supreme Court of the United States. Henry Creamer, plaintiff in error, *vs.* State of Washington, defendant in error. Citation. Filed Oct. 31, 1895. C. S. Reinhart, clerk.

STATE OF WASHINGTON, }
County of King, } *ss:*

We hereby acknowledge due and legal service of the foregoing citation upon The State of Washington, defendant in error in that certain cause pending in the Supreme Court of the United States in which Henry Craemer is plaintiff in error and said State of Wash-

ington is defendant in error, having received a true copy thereof this 30th day October, 1895.

A. W. HASTIE,
Pros. Att'y for King Co., Wash.

88 In the Supreme Court of the United States.

HENRY CRAEMER, Plaintiff in Error,
vs.
STATE OF WASHINGTON, Defendant in Error. } No. —. Stipulation.

It is hereby stipulated and agreed by and between the plaintiff in error, by and through his attorneys, Mess. Dore & Cross, and the defendant in error, by and through its attorney, James A. Haight, assistant attorney general, that the following quoted portions of the statement of facts or transcript of the evidence now on file in the office of the clerk of the supreme court of the State of Washington in the above-entitled case, together with all other portions of the record of the lower court, a transcript of which is now on file in the supreme court of the State of Washington, in said cause, including the affidavit of John F. Miller, Esq., date- August 25th, 1894, shall constitute the record upon which to present said cause to the Supreme Court of the United States.

(*Quoted Portions of the Statements of Facts.*)

In the Superior Court of King County, State of Washington.

STATE OF WASHINGTON, Plaintiff,
vs.
HENRY CRAEMER, Defendant. } #1054. Sept. 7th, 1894.

Be it remembered that this cause coming on regularly this day for trial the following testimony and proceedings were taken and had:

The COURT: Are you ready for trial?

Mr. MILLER: We are ready for trial.

Mr. SODERBERG: If your honor please, we are not ready. I have a few affidavits. (Affidavit of Henry Craemer, affidavit of N. Soderberg, and affidavit of Mary Craemer read and filed.) This, if your honor please, is the showing which I make for a continuance. Of course, I understand that if the prosecution is willing to admit that if this man was present he would testify as in these affidavits stated that then I have not grounds for a continuance.

(The name of Wm. E. Humphries entered as an attorney for the defendant.)

Mr. MILLER: If the court please, I shall oppose a continuance of this case. We cannot and will not admit that this defendant received any money from this man on the 13th day of August last. We will not admit what is in the affidavit, and upon the ground of

diligence being shown by the counsel for the evidence of this witness there is absolutely *has been* none.

(Argument upon the motion.)

The COURT: The application for a continuance is denied. Proceed with the trial. Exception allowed.

89 After the State had closed in chief and the defendant had closed and the State had closed in rebuttal the following facts occurred, as shown by the statement of facts or transcript of the evidence, pages 416 & 417:

Mr. MILLER: We close.

Mr. SODERBERG: If your honor please, a few moments ago information has come to me about some testimony that I consider very important. We could not have discovered it by the use of any diligence. I do not want to state here the nature of it, and it is very important, in my opinion, and would be very injudicious to state it here. Unless we can have an adjournment till tomorrow morning, I shall tomorrow morning apply to reopen the case for the introduction of that evidence. I cannot get it at this moment, but I have sufficient information to know that it is attainable. It is very material. I should like, if your honor please, that we go no further with the taking of testimony tonight. It is a brief matter, but very important.

The COURT: Even on the statement of counsel the court would not be justified in continuing this cause.

Mr. SODERBERG: We say now we will make affidavit to reopen the case as soon as that evidence is attainable.

The COURT: Anything further in rebuttal? Proceed with the argument of the case, gentlemen.

Mr. SODERBERG: If your honor will suspend one moment, I may be able to make a showing now in reference to that evidence. It seems, if your honor please, the witnesses have absented themselves from the court, and for that reason I can't make a showing at this time. I ask, however, for a subpœna for one witness who has not appeared on the part of the prosecution; I want him here tomorrow morning—August Rother.

The COURT: Proceed, gentlemen, with the argument of the case.

(Adjournment taken until 9.30 a. m., after counsel for the State had completed his opening argument.)

Morning session.

Mr. SODERBERG: If your honor please, on last night I gave notice of application to reopen the case. I have my witness here now. I do not want to be required to make a formal showing to obtain that privilege. I declare to the court and to the prosecuting attorney, if you will allow me to put the witness on the stand, it won't take but a minute.

Mr. MILLER: We shall certainly object to it now.

The COURT: Proceed with the argument. Exception.

The trial of this case commenced at 9.30 a. m. on Sept. 7th, 1894, the court taking a recess at 12 m. to 1.30 p. m., recess from 5 to 7 p. m., and adjournment at 10.20 p. m. to Sept. 8th at 9.30 a. m.; Sept. 8th, recess from 12 m. to 1.30 p. m., recess from 5 to 7 p. m., and adjournment at 10.30 p. m. to Monday, Sept. 10th, at 9.30 a. m.; Sept. 10th, recess from 12 m. to 1.30 p. m., recess from 5 to 7 p.m., and adjournment at 10.30 p. m. to Sept. 11th at 9.30 a. m.; Sept. 11th, recess from 12 m. to 1.30 p. m., recess from 5 p. m. to 7 p. m., jury retires at 9 p. m., and returns a verdict of guilty Sept. 12th at 1.10 a. m.

On the motion for a new trial no affidavits or showing of
90 newly discovered evidence were filed or made.

It is further stipulated and agreed by and between the parties thereto, through their respective attorneys, that the plaintiff in error shall have until the 20th day of February, 1896, to transmit the record in this cause to the clerk of the Supreme Court of the United States.

DORE & CROSS,
Att's for Plaintiff in Error.
JAMES A. HAIGHT,
Atts. for Defendant in Error.

Indorsed: No. 1719. Stipulation. Filed Feb. 8, 1896. C. S. Reinhart, clerk.

91 In the Supreme Court, State of Washington.

STATE OF WASHINGTON, Lefendant in Error,
v.
HENRY CRAEMER, Plaintiff in Error. } No. 1719.

I, C. S. Reinhart, clerk of the supreme court of the State of Washington, hereby certify that the above and foregoing is a full, true, and correct transcript of so much of the record in the above-entitled cause as counsel for the respective parties have stipulated shall be sufficient to transmit on appeal to the United States Supreme Court, and in accordance with the writ of error heretofore filed herein I now transmit the aforesaid transcript, together with the original writ of error and the original citation issued and filed in this cause.

In testimony whereof I have hereunto set my hand and affixed the seal of said supreme court this 8th day of February, 1896.

[Seal of the Supreme Court, State of Washington.]

C. S. REINHART, *Clerk.*

Endorsed on cover: Case No. 16,204. Washington supreme court. Term No., 457. Henry Craemer, plaintiff in error, *vs.* The State of Washington. Filed February 24, 1896.

164-704

SUPREME COURT, U. S.
FILED
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CLERK

164-704

IN THE

Supreme Court

OF THE

United States.

October Term, A. D. 1896.

HENRY CRAEMER,

Plaintiff in Error,

vs.

THE STATE OF WASHINGTON,

Defendant in Error,

NO. 457.

In Error to the Supreme Court of the State of Washington.

Reply to Motion to Dismiss.

FRANK B. CROSTHWAITE,
Attorney for Plaintiff in Error.

Jas. Hamilton Lewis
Of Counsel.

Review Printing Company, Burke Building, Seattle.

IN THE

Supreme Court

OF THE

United States.

October Term, A. D. 1896.

HENRY CRAEMER,

Plaintiff in Error,

vs.

THE STATE OF WASHINGTON,

Defendant in Error,

In Error to the Supreme Court of the State of Washington.

Reply to Motion to Dismiss.

Appellant insists that his appeal is well taken, both in point of jurisdiction and on the merits.

1st. The record discloses that he is under sentence of death for the alleged crime of murder; that he was arraigned for trial upon an information, was not indicted by a grand jury or presented by a grand

jury. The record further discloses that a fair trial was practically denied him in the manner that the same was conducted. (See Transcript pp. 5, 9, 10, 33 and 46.

We insist that the defendant was entitled to be presented for a felony involving his life, upon presentment by a grand jury for the following reasons :

1st. That he was a citizen of the United States that as such citizen of the United States he was entitled to the benefit of Article V. of the Constitution, saying :

"No person shall be held to answer for a capital * * * crime unless on the presentment or indictment of a grand jury," etc.

We admit that this provision has been construed to apply to the United States and this disposes of any pretense that we contend that it applies to the states generally.

2nd. We insist that when the state of Washington was admitted to the Union that certain restrictions and limitations were placed around her admission ; and, among other things, a direct agreement made between the state and the federal government that should the federal government take her into the Union, she would continue the right of citizens in so far as the same was then prescribed by the United States Constitution to the then existing territorial citizens and continue them in force in the same manner. In other words, that they should not be diminished or lessened in any degree from that which was possessed by them as citizens of the United States under the territorial

government; and to this end the Enabling Act of the State of Washington prescribes:

"The Constitution (of the State of Washington) shall be republican in form * * * and not be repugnant to the Constitution of the United States."

That is to say: No part of the Constitution of the State of Washington shall be repugnant to any part of the Federal Constitution upon the same question.

It is clear that it was the object to avoid, in the admission of these new states, the conflict which had previously arisen under certain claims of state sovereignty and equal footing, etc.; and in section 8 of the said Enabling Act the further words are found:

If the Constitution * * * is republican in form and if the provisions of this act have been complied with, the said Constitution shall be accepted," etc.

See Sections 4 and 8 of the Enabling Act admitting the State of Washington.
Acts of Congress, February 22, 1889.
Statutes at Large, 1889, page 676.

However, the Constitution of the State of Washington, in violation of this direct inhibition, provided further:

"Offenses heretofore required to be prosecuted by indictment may be prosecuted by information. * * * as shall be prescribed by law."

Sec. 25, Art. 1, State Constitution.

This is the warrant for the law permitting this defendant to be arraigned for his life upon an information. As before shown, the defendant was entitled to be arraigned by a grand jury, under the Federal Constitution.

Section 1. Article V.

That it is apparent that the state Constitution in this regard permitting the defendant to be so arraigned for his life without a grand jury is "repugnant to the Federal Constitution" cannot be denied. It is clearly inconsistent, it is clearly contrary to the provision and guarantee of the Federal Constitution granting immunity from such prosecutions in such manner to the citizen.

"Repugnant" as used in the Act of Congress, refering to the Constitutions of future states, has been defined as follows:

"Inconsistent; contrary to."

See "Repugnant," Anderson's Dictionary.
Texas vs. White, 7 Wallace, 728

Now, here this repugnancy of our Constitution is apparent and is irreconcilably in conflict with the said subject of the Constitution of the United States, the Constitution of Washington in that respect, and legislation under it, must fall or be treated as subordinate, by reason of the contract of our admission, agreeing that the Federal Constitution shall be superior, and by the further reason of the United States recognizing the Federal Constitution as the supreme law of the land.

Niell vs. Delaware, 103 U. S., 370.
Ham vs. Missouri, 18 How. (U. S.), 131.
Beecher vs. Weatherby, 96 U. S., 517.
New Orleans vs. U. S., 10 Peters, 731.
Glasgo vs. Parker, 128 U. S., 575.

If it be said that the Federal Constitution is but a limitation upon the federal government and not upon the state, then it is answered that the state in this case has made *the Federal Constitution its own limitation,* and disposes, by reason of the adoption of the terms of the Enabling Act of any merit to the distinction previously obtaining.

And while it may be true that as to property there may be a segregative interest, the federal government being permitted to take property in a certain way for its use, and the state to take part of the said property for its use, or both use the same property for their respective uses, here the provision of the one government may apply free from the other, because of the segregative interests of the property, *but this is without its application when referred to the life of the citizen.* When the State of Washington takes the life of the citizen because a citizen of the state, she leaves nothing of the life of the citizen of the United States, his rights under the Federal Constitution are specially preserved to him as a citizen of the federal government.

See Constitution and Enabling Act heretofore cited and authorities.

Cooley Const. Limitations, pp. 246, 247.

Paine vs. Virginia, 8 Wall., 180.
Twitchell vs. Com., 7 Wall., 321.
Webster vs. Reed, 11 How., 437.
Reynolds vs. U. S., 98 U. S., 154.
Callan vs. Wilson, 127 U. S., 540.
Hennon vs. Gilmer, 131 U. S., 22.

Therefore, where the Federal Constitution applies at the time of legislation of a state inconsistent therewith, or the existence of a constitutional provision in the state inconsistent therewith, then the rights of the individual under the Federal Constitution haveing first obtained or having first been recognized by the state as such in subsequent constitutional provisions or legislation of the state (inconsistent therewith), such state provision is invalid and inoperative and as respects matters provided in the fourteenth amendment and in the fifth amendment, article one, the said provisions are wholly void.

Owing vs. Speed, 5 Wheaton, 420.
Scott vs. Jones, 6 Howard, 343.
Niell vs. Delaware, 103 U. S., 370.
Water Power Co. vs. Green Bay and Canal Co., 142 U. S., 254.

Here the court say:

"It is argued by the defendant that the act of the legislature complained of was enacted in 1848, and the fourteenth amendment to the Constitution was not adopted until 1868, and was inapplicable * * * but it appears that the beginning of the taking of the

property and the taking of the same was after the adoption of the fourteenth amendment, though assumed under the law of 1848. The company gave notice, not until 1880, that they would take this property * * * and that they claimed exclusive rights. *This may be considered as a deprivation within the meaning of the amendment.*

Nor can it be urged that the repugnancy in the State Constitution was a known matter when the State was admitted and this was adopted as an amendment to the Enabling Act, as has been suggested by the State.

1st. No amendment could be made to that act but by congress. It was a legislative function.

2nd. The admission by the president of the State and the failing to object to this repugnancy was but a negative act of the executive, who was powerless to either amend or reject the provisions of the Enabling Act. This was decided in the Supreme Court of the United States in the Rauscher case, holding that President Pierce could not amend a treaty made with Spain and the United States Senate.

See Rauscher case, 119 U. S., 407.

This is held in the Supreme Court of the United States refusing to confirm President Grant's treaty or submitted arrangement over the Cuban trouble, on the ground that it was legislation or treaty matter not within the sole power of the executive.

This is held as late as 1891 and 1892 by the Supreme Court of the United States as regards the reciprocity clause of the McKinley Act. Where they they hold that if this reciprocity act vesting in the president the privilege of its enforcement was intended to give him *the right to legislate by declaring whether it exists or does not exist* as a process of legislation, the law would be *utterly void*; but construing it as giving the president but the right of saying when and to whom the law should apply, it was sustained on the ground that it but permitted him to name the time and place of enforcement. The law in its entirety being made by congress.

See Marshall Field vs. Collector et al., 141, 142, 146, U. S.

Lippman et al. vs. Hedden, same case.

If it be insisted however, that the president would have the authority of Congress in this matter, then it is contended here that even Congress by its acceptance of the State Constitution by any act of Congress could not have condoned the repugnancy of the two Constitutions so as to have avoided the consequences of their confliction, or have rendered the provision in the Federal Constitution subordinate to that of the State. This question is absolutely met and decided in

Barry vs. Gunn, 15 Wallace, 610-624.

Say the court:

"Section 10 of article one, of the Constitution of the United States declares 'no state shall pass any law impairing the obligation of contracts.' Under the

constitution of Georgia she took to herself the right of practically nullifying contracts previously made." Say the Supreme Court: "Though her constitution was sanctioned by Congress, this provision can in no sense be considered an act of that body. The sanction was only permitted as part of the process of her rehabilitation, and involved nothing affirmative or negative beyond that event. If it were express and unequivocal, the result would be the same. *Congress cannot by authorization or ratification give the slightest effect to a State law or Constitution in conflict with the Constitution of the United States.* * * * The legal remedies for the enforcement of a contract a state may change provided they involve no impairment of a substantial right. If the provisions of the Constitution or the legislative act of the state (thereunder) fall within the category last mentioned, *they are to that extent* utterly void. They are for all the purposes * * * as if they had never existed.

Hoffman vs. Quincy, 4 Wall., 535.

White vs. Hart, 13 Wall., 646.

Gunn vs. Barry, 15 Wall., cited.

Surely then the president could not do as regards a legislative function what congress assembled could not accomplish.

The president is inhibited from doing any of the acts, the duties of which devolve on congress.

Article II, Section 2.

Kendall vs. U. S., 12 Pet., 523.

Marbury vs. Madison, 1 Crach., 137.

Holding, "The president cannot control a statute nor dispense with its execution, nor authorize the secretary to omit the performance of any act enjoined by law."

But if it be taken that the latter positions are untenable and that the president could accept the Constitution as an amendment to the Enabling Act the same as congress, then we must treat the matter as regards the repugnancy as suggesting to the presidency only such modification as on its face it seemed to bear. The clause is:

"Offenses heretofore prosecuted by indictment may be prosecuted by information. * * * *as shall be provided by law.*

We must construe this as meaning as shall be provided by law in harmony with what had been provided by law and held to be only legal provisions that the law in such case could make. That is, the president must have understood this to mean prosecutions by information in such cases as *could* be provided by law. This had previously been decided by the Supreme Count of the United States to mean offenses which were not odious; towit: misdemeanors punishable by fine, and this only.

In re Wilson, 114 U. S.

In re Mackin, 126 U. S.

In re Palsier, Etc., 143 U. S.

It therefore cannot be assumed that the words—as shall be provided by law—could have indicated to the president that an attempt would be made to provide by law that which had been declared by law illegal, but only such matters as could *legally be provided by law.*

See U. S. Const., Art. 6.
Ellison vs. Hanshaw, 4 Wheaton, 225.
Chicago vs. Denver R. R., 143 U. S., 596.
Louisiana vs. Meyer, 109 U. S., 288.
Spies vs. U. S., 123 U. S. 131.

Especially must this be true where the United States Constitution had expressly enacted—

That no state shall make or enforce a law which shall abridge the *privilege or immunities* of citizens of the United States.

Art. 6 U. S. Const.
Reynolds vs. U. S., 98 U. S., 154.

Therefore we take it that the law permitting informations by which one can be arraigned in a capital case is contrary to the state Constitution recognizing the Constitution of the United States as supreme, is *contrary and repugnant* to the Federal Constitution.

Article XIV., Section 5.

Is contrary to the Enabling Act:

Section 4 and Section 8.

And is therefore void and inoperative.

It contended that because the Constitution of the

the State of Washington prescribes that the defendant may be presented for his life upon an information, that such gives authority so to do.

See Constitution of the State of Washington, Section 25.

Code of Washington, Vol. 2, page 814.

And that by virtue of such provision, the legislature has prescribed the method for so doing and that under this method the same has been done.

3d. We insist that the Enabling Act requiring the Constitution of the State of Washinton to be consistent and "not inconsistent and not repugnant to the Federal Constitution" was to avoid this very confusion, and was a grant to the citizen of the Territory or future State that his rights were the same—were the same rights as a citizen of the United States as of the state: That is to say, as to life and liberty; for here it will be observed that the life of the citizen of the State of Washington cannot be taken without taking the life of the citizen of the United States. We insist that the very object of the act was to protect the citizen in so far as his rights as a citizen of the United States were concerned, from having them taken or curtailed or being proceeded against in any manner than that which was his privilege as a citizen of the Territory and a citizen of the United States under the Federal Constitution. That by reason of this compact between the Federal Government and himself to admit the state into the Union upon such terms, he voted to accept the act and

to pass into the Union under its privileges. To now permit the state in its Constitution to make a provision, and the state after its admission to make legislation directly inconsistent and repugnant to such provisions of the Federal Constitution as a citizen assumed he was protected under and were extended to him by the form of submitted admission, is to permit the state to violate the right of that citizen as guaranteed him as a citizen of the United States under the Federal Constitution, and also to violate a right guaranteed him under the laws of the United States, to-wit: The act of Congress heretofore referred to.

We insist that the rule is that:

*"If any right, privilege or immunity of the accused, secured or guaranteed by the Constitution or laws of the United States have been denied by a refusal of the State court to set aside either the indictment * * * or by any erroneous ruling in the progress of the trial, his remedy is through the revisory power of the highest court of the State and from that court by due appeal to the Supreme Court of the United States." "Such refusal and erroneous ruling creates in the law a Federal question and establishes the jurisdiction of the court to hear the cause upon its merits."*

Gibson vs. the State of Mississippi, 16 Supreme Court Reporter, No. 27, page 907.

Sustained by the previous announcement to the same effect in:

Virginia vs. Reeves, 100 U. S., 313.

In re Wood, 140 U. S., 278.

We further insist that the rights of the defendant as claimed here by him are protected under the fourteenth amendment to the Constitution. For that, if the state through its legislation can abridge his privileges and immunities as a citizen of the United States in the protection of his life and thus deprive him of that life without that due process of law which was prescribed for his benefit and avoid its uniform application, the state would thus be permitted to violate the Constitution and deprive him of a constitutional right as such citizen.

Re Converse, 137 U. S., 624.

Caldwell vs. Texas, 137 U. S., 692.

4th. It appears by the record in this case that the Federal rights and Federal exemption here claimed were set up:

1st. By demurrer in the Superior Courtt then pleaded by special plea in the Superior Court; after conviction was raised on a motion in arrest of judgment and taken to the Supreme Court of the State and in all instances, decided adversely to the defendant, and had such decision been in his favor by decisions on other points adverse, this would have nevertheless and notwithstanding entitled him to what he claimed—a re-trial by proper process.

Thus the Federal question decided adversely to him is the direct and independent occasion of his present sentence of death.

This Court has said:

"No State can deprive a particular person or class of persons of equal and impartial justice under the law * * * The power of the state must be exerted within the limits of these principles: and a judgment cannot be sustained when special, partial and arbitrary."

Caldwell vs. The State, 137 U. S., 691.

Here the court says,—a negative assertion:

"Had the defendant claimed a right, privilege or immunity under the Constitution of the United States at the outset of the case, such being shown as having been raised in the intermediate and Supreme Courts of the state, it would be heard and passed upon by the Supreme Court of the United States."

We insist that as the record discloses a denial of a right to the defendant established for him by the laws of United States—The act of Congress admitting the State to the Union and the Constitution of the United States referred to in the act—and that he claimed such all through the proceedings, vests this court with the right to hear the cause and to ascertain what rights under the Constitution and laws he has; and then, upon the merits to say whether or not such right does not establish a privilege in him personally to claim exemption from being placed on trial for his life by a process contrary to that prescribed by the Constitution of the United States as a right, if all such rights were continued in his behalf by the act of Congress creating him a citizen of the State of Washington

and of the United States conjunctively.

McKane vs. Dunstan, 153 U. S., 684.

Particularly where the claim is that the State by legislation establishes a right in behalf of the State against the individual where the individual claims his right from an act of Congress or by the Constitution, such conflicting claims, if they arise out of a mere reading of the law, make a Federal question and justifies the Court to enter into the merits, taking jurisdiction to ascertain whether the letter of the law justifies the claim of the defendant. This becomes the question on the merits after the jurisdiction is obtained, because of the apparent inconsistency or repugnancy of the different provisions of the different laws of the different sovereignties.

We think this is a fair statement of the rule laid down by this Court upon such points in

Schively vs. Bowlby, 152 U. S., page 1, where the Court states:

"A State judgment reciting that a grant passed no title or right, as against a subsequent deed from the State in lands below high water mark, presents a Federal question within the appellate jurisdiction of the Supreme Court of the United States."

To the same effect:

Powell vs. Brunswick Supervisors, 150 U. S., 433.

Mobile & O. Railroad Co. vs. Tennessee, 153 U. S., 486.

The real test of the question as has been established by this honorable Court is as follows:

"Where it appears that some title, right, privilege or immunity on which a claim depends will be defeated by one construction of the Constitution *or of a law of the United States*, or sustained by an opposite construction, the cause is one arising under the Constitution of the United States."

Cook vs. Avery, 147 U. S., 375.

Following the dicta in

McPherson vs. Blacker, 146 U. S., 1.
Boyd vs. Nebraska, 143 U. S., 135.

These views were practically announced by this Court in

O'Neil vs. Vermont, 144 U. S., 323.

The Court holding, however, that the facts in that case did not bring it within the rule of the law.

We respectfully submit that a Federal question is fully raised and fully sustained under the rulings of this Court as shown by the record in the cause at bar; and ask that the jurisdiction be sustained and the motion to dismiss be denied.

Most respectfully submitted,

FRANK B. CROSTHWAITE,
Attorney for Appellant.

JAS. HAMILTON LEWIS, *of Counsel.*

164-702

Office Supreme Court U. S.
FILED
JAMES H. McKENNEY,
CLERK

IN THE

SUPREME COURT

OF THE

UNITED STATES

164-704

October Term, A. D. 1896.

HENRY CRAEMER, *Plaintiff in Error,* *vs.* THE STATE OF WASHINGTON *Defendant in Error.*	No. 457.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON

MOTION TO DISMISS FOR WANT OF JURISDICTION

ADDISON W. HASTIE,

Attorney for Defendant in Error.

NEWMAN & MOULTON, PRINTERS, HINCKLEY BLOCK, SEATTLE

IN THE

SUPREME COURT

OF THE

UNITED STATES

October Term, A. D. 1896.

HENRY CRAEMER,
Plaintiff in Error,
vs.
THE STATE OF WASHINGTON
Defendant in Error.

No. 457.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON

MOTION TO DISMISS FOR WANT OF JURISDICTION

Now comes the State of Washington, defendant in error, by its attorney, and moves the court to dismiss and set aside the writ of error herein, and all proceedings taken by the plaintiff in error thereunder.

In support of this motion the defendant in error respectfully represents to the court:

IN THE

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MOTION TO DISMISS FOR WANT OF JURISDICTION

Now comes the State of Washington, defendant in error, by its attorney, and moves the court to dismiss and set aside the writ of error herein, and all proceedings taken by the plaintiff in error thereunder.

In support of this motion the defendant in error respectfully represents to the court:

STATEMENT OF THE CASE.

The facts showed that on August 13th, 1894, in Seattle, a German woman and her little child were murdered in their home by the beating in of their skulls with a hammer. About $240 in gold coin was taken from an old trunk. An attempt was made to burn the deceased and the house by placing bedding, books and papers saturated with coal oil upon the bodies. The attempt to thus destroy them failed. The plaintiff in error, Henry Craemer, was tried upon an information charging him with this murder, and found guilty on September 12th, 1894. The court on October 13th, 1894, sentenced the accused to be hanged by the neck until dead. Thereafter the plaintiff in error duly appealed from the judgment and sentence, to the Supreme Court of the State of Washington, 12 Wash., 217. On August 21st, 1895, that court duly affirmed in all things the judgment and sentence.

Upon application of counsel for accused, the Chief Justice of the Supreme Court of the State of Washington granted a writ of error, citation and order staying all proceedings, and thereupon the case was sent to the Supreme Court of the United States.

ARGUMENT.

This motion to dismiss ought to be granted for the following reasons:

I.

The case presents no Federal question for the consideration of the court.

II.

The court has no jurisdiction over this cause and no writ of error should have been granted.

III.

For other good and sufficient reasons appearing on the face of the record.

It is the contention of counsel for plaintiff in error that a Federal question is involved in this cause as set out in the writ of error in this "that plaintiff in error was denied sufficient time to prepare his case and to procure the attendance of witnesses to testify in his behalf contrary to the Constitution of the United States, and wherein was drawn in question the right, privilege or immunity claimed by plaintiff in error under Article VI, Amendatory to the Constitution of the United States."

The Article VI referred to and upon which they base the only Federal question claimed in this case is as follows:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

It is generally conceded that this section of the Constitution applies only to the general government and not to the individual states. This constitutional provision provides for the practice in the United States courts, and is not intended for, nor is it applicable to, the practice in the state courts.

Withers vs. Buckley, 20 Howard, 84.

If the section of the Constitution relied upon by counsel for plaintiff in error, did apply and control the state courts, there is nothing in the record in the case at bar to which it could be applied. The contention of counsel for the accused is, "that he was denied sufficient time to prepare his case, and

to procure the attendance of witnesses to testify in his behalf."

The section of the Constitution referred to does not attempt to provide for time to prepare cases, but on the other hand it provides "the right to a *speedy* and public trial." Counsel for accused does not contend that he was refused "compulsory process for obtaining witnesses in his favor," but that he did not have sufficient *time* to procure the attendance of witnesses. The record shows that compulsory process was granted, and the services of the sheriff were at the disposal of the accused, all without charge or cost.

The principal point of contention in the State Supreme Court, and the only question raised in this court is, that the plaintiff in error asked for a continuance in the trial court, in order to obtain an additional witness. The affidavit upon which the application was based was fatally defective in a number of essentials, and being resisted by counsel for the state, the application for a continuance was overruled. Upon appeal to the Supreme Court of the State, the sufficiency of the affidavit and correctness of the trial courts ruling thereon, were fully considered.

State vs. Craemer, 12 Wash., 217.

Having been passed upon by the highest tribu-

nal of the State of Washington, it now becomes the law and practice of that state.

Wherefore the defendant in error moves this honorable court to dismiss the writ of error herein, and set aside all proceedings taken by plaintif in error thereunder.

ADDISON W. HASTIE,
Attorney for defendant in error.

To Messrs. John F. Dore and Dore & Cross,
Attorneys for plaintiff in error:

Please take notice that the foregoing and attached motion to dismiss will be brought on for hearing before the Supreme Court of the United States, in the city of Washington, D. C., on Monday October 19, A. D. 1896, at twelve o'clock, noon, of that day, or as soon thereafter as counsel can be heard.

ADDISON W. HASTIE,
Attorney for defendant in error.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1896.

HENRY CRAEMER,
Plaintiff in Error,
vs.
THE STATE OF WASHINGTON
Defendant in Error.

No. 457.

Affidavit of Service

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, } ss.
County of King. }

William W. Wilshire, being first duly sworn, deposes and says that he is a Deputy Prosecuting Attorney of King County aforesaid, and a citizen of the United States, over the age of twenty-one years, and that he personally served the attached and foregoing motion upon Henry Craemer the above named plaintiff in error, on the fifth day of September, A. D. 1896, by delivering to and leaving with said Henry Craemer three copies thereof in Seattle, King county, State of Washington; and affiant further says that he knows the person so served to be the Henry Craemer named as plaintiff in error in the above entitled cause.

WILLIAM W. WILSHIRE.

Subscribed and sworn to before me this fifth day of September, A. D. 1896.

{ SEAL }

HERBERT B. HUNTLEY,
Notary Public in and for the State of Washington, Residing at Seattle.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1896.

HENRY CRAEMER,
Plaintiff in Error,
vs.
THE STATE OF WASHINGTON
Defendant in Error.

No. 457.

Affidavit of Service

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, } ss.
County of King. }

Allie J. Poole, being first duly sworn, deposes and says that she is a citizen of the United States, over the age of twenty-one years, and that she personally served the attached and foregoing motion upon John F. Dore and Daniel Cross, of the firm of Dore & Cross, the attorneys for the above named plaintiff in error, on the fourth day of September A. D. 1896, by delivering to and leaving with them three copies thereof in Seattle, King county, State of Washington; and affiant further says that she knows the persons served to be the attorneys and counselors of record for the above named plaintiff in error.

ALLIE J. POOLE.

Subscribed and sworn to before me this fourth day of September, A. D. 1896.

{ SEAL }

HERBERT B. HUNTLEY,
Notary Public in and for the State of Washington, Residing at Seattle.

Due and timely service of three copies of the within motion and notice is hereby admitted this day of 1896, at Seattle, Washington.

Attorneys for Plaintiff in Error.